

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURE DECISIONS

DECISIONS OF THE SECRETARY OF AGRICULTURE

ISSUED UNDER THE

REGULATORY LAWS ADMINISTERED BY THE

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(Including Court Decisions)



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PREFATORY NOTE

Agriculture Decisions is an official publication designed to facilitate access to decisions and orders issued by the Secretary of Agriculture, or officers authorized to act in his stead, in matters arising under laws administered by the Department of Agriculture.

The published decisions principally consist of those issued in formal adjudicatory administrative proceedings conducted for the Department under various statutes and regulations pursuant to the Administrative Procedure Act. Selected court decisions concerning the Department's regulatory programs are also included. The Department is required to publish its rules and regulations in the Federal Register and, therefore, they are not included in Agriculture Decisions.

Consent Decisions entered subsequent to December 31, 1986 are no longer published. However, a list of these decisions is included. (53 F.R. 6999, March 4, 1988.) The decisions are on file and may be inspected upon request made to the Hearing Clerk, Office of Administrative Law Judges.

Decisions are published in order of their issuance or finality under the principal statutes administered by the Department, which are the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*), the Agricultural Marketing Agreement Act of 1937 (U.S.C. § 601 *et seq.*), Animal Quarantine and Related Laws (21 U.S.C. § 111 *et seq.*), the Animal Welfare Act (7 U.S.C. § 2131 *et seq.*), the Federal Meat Inspection Act (21 U.S.C. § 601 *et seq.*), the Grain Standards Act (7 U.S.C. § 1821 *et seq.*), the Horse Protection Act (15 U.S.C. § 1821 *et seq.*), the Packers and Stockyards Act, 1921, (7 U.S.C. § 181 *et seq.*), , the Perishable Agricultural Commodities Act, 1930, (7 U.S.C. § 499a *et seq.*), the Plant Quarantine Act (7 U.S.C. § 151 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. § 451 *et seq.*), and the Virus-Serum-Toxin Act of 1913 (21 U.S.C. §151 *et seq.*),

The published decisions may be cited by giving the volume number, page number and year, e.g., 1 Agric. Dec. 472 (1942). It is unnecessary to cite a decision's docket or decision number. Prior to 1942 decisions were identified by docket and decision numbers, e.g., D-578; S. 1150 and the use of such references generally indicates that the decision has not been published in Agriculture Decisions.

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AGRICULTURAL MARKETING AGREEMENT ACT

In re: WILEMAN BROS. and ELLIOTT, INC., and KASH, INC.
AMA Docket Nos. F&V 916-3 and 917-4.
Order filed July 8, 1988.

Gregory Cooper, for Respondent.
Brian C. Leighton, Fresno, California, for Petitioners
Order issued by Donald A. Campbell, Judicial Officer.

ORDER DENYING INTERIM RELIEF

Petitioners' Application for Interim Relief is denied. *In re Wileman Bros. & Elliott, Inc.*, 46 Agric. Dec. ____ (May 6, 1987), *reconsideration denied*, 46 Agric. Dec. ____ (May 18, 1987); *In re Saulsbury Orchard & Almond Processing*, 46 Agric. Dec. ____ (Apr. 1, 1987); *In re Borden, Inc.*, 44 Agric. Dec. 661 (1985); *In re Sequoia Orange Co.*, 43 Agric. Dec. 1719 (1984); *In re Dean Foods Co.*, 42 Agric. Dec. 1048, 1048 (1983); *In re Moser Farm Dairy, Inc.*, 40 Agric. Dec. 1246, 1246-50 (1981).

ANIMAL QUARANTINE AND RELATED LAWS

The following decision was inadvertently omitted from the March 1985, issue of Ag. Dec. -- Editor.

In re: STANLEY NABYDOSKI and RICHARD NABYDOSKI d/b/a NABYDOSKI BROTHERS.

AQ Docket No. 86.

Order filed March 12, 1985.

The Judicial Officer directed the Hearing Clerk to send respondents the routine notification that the initial decision and order became final on the 35th day after service since respondent's letter seeking to be exempt from the Swine Health Protection Act was not an appeal, and even if it were an appeal, it was not timely filed.

Order issued by Donald A. Campbell, Judicial Officer.

ORDER AS TO EFFECTIVE DATE

On January 18, 1985, Administrative Law Judge Edward H. McGrail (ALJ) issued an initial decision and order in this proceeding under the Swine Health Protection Act (7 U.S.C. § 3801 *et seq.*) ordering respondents to cease and desist from violating the Act, revoking their license to operate a facility to treat garbage that is fed to swine, and assessing a civil penalty of \$5,000. The ALJ's initial decision was received by respondents on January 30, 1985.

On March 5, 1985, respondent Stanley Nabydoski filed a letter stating in its entirety:

In response to your letter, Congress passed the Swine Protection Act & failed to fund it therefore, government tampering with business.

Richard Nabydoski has no pigs since the old law expired.

I want to be exempt from the Act.

This letter is not an appeal (7 C.F.R. § 1.145(a)), and even if it were an appeal, it was not timely filed. (Even if it could be considered as an appeal, it sets forth no basis for setting aside the ALJ's initial decision and order in this case.)

Since no appeal was filed in this proceeding, and it is now too late to file an appeal, the Hearing Clerk is directed to send respondents the routine notification that the initial decision and order became final on the 35th day after service.

ANIMAL WELFARE ACT

In re: JAMES W. HICKEY, d/b/a S&S FARMS, and S.S. FARMS, INC.
AWA Docket No. 369.
Order filed July 28, 1988.

John Griffith, for Complainant.
Roger Reid, Albany, Oregon, for Respondents
Order issued by Donald A. Campbell, Judicial Officer.

STAY ORDER

The civil penalty and suspension provisions of the order previously issued in this case are hereby stayed pending the outcome of proceedings for judicial review.

The cease and desist and recordkeeping provisions shall remain in effect.

In re: OZARK AIRLINES.
AWA Docket No. 367.
Order filed July 21, 1988.

Donald Tracy, for Complainant.
David Agee, Springfield, Missouri, for Respondent.
Order issued by Victor W. Palmer, Chief Administrative Law Judge.

ORDER DISMISSING COMPLAINT

Complainant has moved to dismiss the complaint in this matter and for good cause shown: the complaint is hereby dismissed.

PACKERS AND STOCKYARDS ACT

COURT DECISIONS

ROBERT E. PARCHMAN; VIRGIL R. (RAY) LEMONS; JACK E. HAMILTON, Petitioners v. UNITED STATES DEPARTMENT OF AGRICULTURE, Respondent.

No. 87-3701.

Decided July 22, 1988.

Gerald D. Eftink (argued), Daniel W. Olsen, Van Hooser, Olsen & Parkinson, P.C., Kansas City, Mo., for petitioners.

Edward Silverstein, Aaron B. Kahn (argued), for respondent.

UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

Before KRUPANSKY and BOGGS, Circuit Judges, and BROWN, Senior Circuit Judge.

BOGGS, Circuit Judge.

Robert Parchman, Virgil (Ray) Lemons and Jack Hamilton (the stockyard operators) are partners. They operate stockyards in Cumberland City, Tennessee and Paris, Tennessee. Their business is to weigh livestock and sell the animals on behalf of their owners at public auction. Although the buyers and sellers of livestock transact business on the basis of the animals' weight, the stockyard operators receive a set commission of \$7.00 a head for their services.

On May 28, 1987, the Judicial Officer for the Department of Agriculture (JO)¹ upheld the decision of an administrative law judge (ALJ) that the stockyard operators willfully violated statutory and regulatory provisions of the Packers and Stockyards Act, 1921, 7 U.S.C. §§ 181-229 (1982) (the Act), based on the determination that, *inter alia*, the stockyard operators "deliberately weighed animals at less than their true and correct weights with full knowledge that this was prohibited by the Act and the regulations."² The

¹The Agriculture Department's JO has been designated by the Secretary of Agriculture as the final decisionmaker in adjudicatory proceedings brought to enforce the department's various regulatory programs. See 7 C.F.R. § 2.35 (1986). "The JO, sitting in review of an ALJ's initial decision, is authorized by statute 'to substitute its [sic] judgment for that of the LJ.'" *Farrow v. United States Dept of Agric.*, 760 F.2d 211, 213 (8th Cir. 1985) (quoting *Watt v. United States*, 721 F.2d 1125, 1129 (7th Cir. 1983)).

²The complaint filed against the stockyard operators by the Packers and Stockyards Administration charged that they:

(1) Weighed such consigned livestock at less than their true and correct weights;

(continued...)

JO adopted the ALJ's findings, decision and order, including the ALJ's proposed sanction with modifications that are minor and irrelevant to this proceeding. That sanction suspended the stockyard operators' registration under the Act for 90 days and assessed a civil penalty in the amount of \$10,000.³

On petition for review of this order, the stockyard operators do not challenge the findings that they violated the Act. Rather, they contest the determination that their violations were willfully committed. They contend that the weighing errors were the result of a mechanical malfunction in their scale and, therefore, that they did not have a scienter sufficient to merit the severity of the sanctions imposed. The stockyard operators also contend that they were deprived of due process during the administrative proceedings because the ALJ refused to allow into evidence a photograph of their scale and because the JO's well-known views favoring severe sanctions as a deterrent⁴ "means[s] that severe sanctions will issue regardless of whether there is willful conduct."

For the reasons that follow, we reverse the findings that the stockyard operators weighed livestock "at less than their true and correct weights," and that the violations were willfully committed, on the ground that substantial evidence does not exist in the record to support these findings. However, the record does contain substantial evidence that the stockyard operators were not complying with the Act and, accordingly, we affirm the findings of the statutory and regulatory violations.

²(...continued)

(2) Issued scale tickets and accounts of sale to the consignors of such livestock on the basis of false weights;

(3) Paid the consignors of such livestock on the basis of the false weights;

(4) Issued buyer invoices and scale tickets to the purchasers of such livestock on the basis of the false weights;

(5) Collected the purchase prices from the purchasers of the livestock on the basis of the false weights; and

(6) Issued scale tickets which failed to show the time of balance or the address of the market, and which were not initialled by the weighmaster.

On the basis of these charges, the operators were found in violation of 7 U.S.C. §§ 205, 208, 213(a), 221 and 9 C.F.R. §§ 201.43, 201.49, 201.55, 201.71, 201.73, 201.73-1 (1986).

³Although the violations petitioners are charged with stem from their Cumberland City operation, their Paris operation also is affected by the 90-day suspension.

⁴*See, e.g. Garver v. United States*, 846 F.2d 1029 (6th Cir. 1988) (livestock dealer suspended for two years attacked his sanction on the ground that past writings of the same JO, in which he "opined at some length about the usefulness of severe sanctions as a deterrent," evidenced disqualifying personal bias).

Because the stockyard operators had been given written notice that they were not operating in accordance with the Act and could be suspended if future violations were discovered, a finding of willfulness is not necessary to support the proposed suspension of their registration. 5 U.S.C. § 558(c) (1982).⁵ While we are disturbed by the intemperate tone of parts of the JO's decision and order and have given the charge of biased adjudication the attention that this most serious allegation deserves, we conclude that evidence of disqualifying bias is not present in this record.

Our review of the administrative proceedings indicates that the stockyard operators were afforded due process and that the determinations made, apart from the exceptions noted, are supported by substantial evidence. Thus, the proposed sanction is upheld.

I

On February 26, 1986, a hearing was held before an ALJ on the charges brought against the stockyard operators. At the hearing, an employee from the Packers and Stockyards Administration, Jimmy Thompson, testified that on August 11, 1984, he and another agency employee went to the Cumberland City Stockyard to conduct a routine "checkweighing" investigation. According to Thompson, "checkweighing" is a procedure that we [the Packers and Stockyards Administration] use to determine if the weighmaster is weighing accurately or not." A check-weigh does not determine the accuracy of a scale, but only if the scale appears to be operated properly by the stockyard. Thompson further explained that

[a]t a check-weighing investigation, we will determine which market we are going to check-weigh. We will arrive at that market unannounced. In the case of an in-weigh market, or in the case where livestock is weighed before it is sold, we will go directly to the scale and announce ourselves to the weighmaster or the people that are near the scale. We will then check the balance on the scale and tell them our purpose or the reason for our visit.

Thompson added that if a scale is being operated properly, the scale, upon reweighing of an animal, "should have reweighed the same animal at the same amount or less [than it was] . . . weighed [at] . . . the first time."

⁵Section 558(c) of the Administrative Procedure Act, 5 U.S.C. § 558(c), states:

Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements,

On August 11, 1984, Thompson checked the Cumberland City Stockyard scale while the other agency employee and Robert Parchman selected some livestock to be reweighed. Thompson testified that he did not see anything binding on the scale or any other obvious impairment, that "everything looked proper" and that he "obtained a good zero balance on the scale" before the livestock were reweighed.

The result of the August 1984 check-weigh was that 11 animals were reweighed as having weights 5 to 15 pounds higher than the weights recorded by the stockyard weighmaster on the first weighing. Thompson testified that it would be virtually impossible for the animals to have gained weight during the interval between weighing because they had been held in a pen without food or water. He also stated that a five-pound discrepancy between scale readings was not an unusual occurrence since the viewing position of the weighmaster can affect how the scale is read.

Thompson also testified that the August 1984 investigation revealed that the scale tickets used at the stockyard did not comport with the Act's regulations because they failed to indicate the address of the market or the time when the scale had been zero balanced, and the weighmaster had not initialed some of the tickets prepared that day.

On August 21, 1984, the Regional Supervisor of the Packers and Stockyards Administration wrote Robert Parchman stating,

Our investigation [on August 11, 1984] revealed that the calves were not weighed accurately. These weight discrepancies were discussed with you at that time.

As you are aware, weighing livestock inaccurately is a violation of the Packers and Stockyards Act. That Act makes you responsible for accurately weighing livestock consigned to your market for sale. We request that you review the enclosed instructions for weighing livestock with your weighmaster and take the necessary action to insure accurate weights. Please advise this office within 15 days [of] what action you have taken to improve your weighing practices.

If similar discrepancies are found in the future, it may be necessary to initiate administrative proceedings which could lead to suspension of your registration under the Packers and Stockyards Act.

Nine months later, on May 18, 1985, Thompson and David Moss, an inspector of large scales employed by the Tennessee Department of Agriculture, conducted another checkweighing investigation at the Cumberland City Stockyard. Thompson stated that before they began the reweighing process and as they were checking the balance on the scale, Ray Lemons, the weighmaster that day, informed them that he believed a part of the scale was

dragging on the ground. Thompson testified, however, that he did not observe any problem with the scale.

The check-weigh was conducted and again the animals that were reweighed did not have food or water between the weighing. Thompson testified that the scale zero balanced before and during the reweighing process and that the reweighing indicated higher weights for the animals than the weights initially recorded by the stockyard weighmaster. The discrepancies discovered on May 18, 1985, ranged from 5 to 55 pounds, with the majority being 20 to 25 pounds apart.

The May 1985 investigation also revealed that the stockyard's scale tickets did not indicate when the zero balance had been checked or the address of the market. Stockyard records, known as "pen sheets" or "buyer's bills" were copied during the investigation and indicated that livestock had been bought and sold on the basis of the weights originally recorded by the stockyard.

Moss, the state inspector, testified that he had inspected the scale at the Cumberland City Stockyard 11 days earlier, on May 7, 1985. Unlike a check-weigh performed by the Packers and Stockyards Administration, Moss's inspection does determine how accurately the scale weighs objects. According to Moss, the May 7, 1985, inspection revealed that the scale was underweighing by 5 or 6 pounds. Moss stated that he adjusted the scale so that it was operating at an acceptable level of accuracy.

Terry Lemons, an employee of the stockyard operators, testified at the hearing that he initially weighed the cattle that were later reweighed on August 11, 1984. Terry Lemons admitted that there was a period of 45 minutes to an hour that day during which he was busy and "got lax in checking my [zero] balance." He also stated that it was not uncommon for animals to knock part of the scale loose and that the part would then drag on the ground while an animal was weighed. Terry Lemons indicated that he believed the dragging scale part caused the weight discrepancies.

Ray Lemons also testified at the hearing. During his testimony he admitted that the stockyard used scale tickets which did not conform with the Act's regulations.

After all the evidence was submitted, the ALJ, disregarding weight discrepancies of five pounds because that spread is "not" unusual, concluded that on August 11, 1984, 9 head of cattle, and on May 18, 1985, 20 head of cattle, were weighed "at less than their true and correct weights." The ALJ also found that the weighmaster had not recorded the time when the scale was zero balanced on the scale tickets, that the tickets did not show the address of the market and that the weighmaster failed to initial some scale tickets, all in violation of the Act's regulations. The ALJ determined that the operators had willfully committed the violations because they

were well aware of the necessity to maintain and properly operate the scale, specifically, through knowledge of the "Instructions for Weighing Livestock[,"] discussion of violations with Packers and Stockyards investigators, and acknowledgement of the latter's letter to respondents,

dated August 21, 1984, which admonished respondents "to take the necessary action to insure accurate weights."

On July 21, 1986, the operators appealed the ALJ's decision to the JO, Donald Campbell. The operators requested oral argument, which is discretionary under the regulations. 7 C.F.R. § 1.145(d). Campbell denied the request stating, "inasmuch as the issues are not novel or difficult, the case has been thoroughly briefed, and oral argument would seem to serve no useful purpose."

Campbell adopted the ALJ's decision and order although he made a few minor changes and added a substantial discussion addressing his own view of the evidence and the propriety of the ALJ's proposed sanction.⁶ Although he affirmed the finding that the violations were willfully committed, Campbell stated that it was irrelevant in this case whether the violations were willful or not. He noted that the August 21, 1984, letter from the Regional Supervisor warned the stockyard operators that future noncompliance with the Act could lead to suspension of their registration. Thus, the suspension of the stockyard operators' registration was authorized by section 558(c) of the Administrative Procedure Act. Campbell concluded that the sanction of a suspension and civil penalty "is in accordance with the announced policy of the Department and is determined to be appropriate under the circumstances."

II

The findings of the JO on behalf of the Secretary of Agriculture must be affirmed if supported by substantial evidence in the record. *Blackfoot Livestock Comm'n v. Dept. of Agric.*, 810 F.2d 916, 920 (9th Cir. 1987); *Farrow*, 760 F.2d at 213; *Mattes*, 721 F.2d at 1128-29. Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229, 59 S.Ct. 206, 216, 83 L.Ed. 126 (1938)). If substantial evidence

⁶One change Campbell made was to add an appendix in which he reproduces an excerpt from an earlier decision of his, *In re Spencer Livestock Comm'n Co.*, 46 Agric. Dec. ___, slip op. (Mar. 19, 1987), *aff'd*, 841 F.2d 1451 (9th Cir. 1988), which discusses the sanction policy of the Department of Agriculture and explains that the policy is designed to promote deterrence. In the excerpt, Campbell quotes various authorities on the subject of punishment, including Plato, Socrates, Nietzsche and the Bible. For example, he emphasizes the deterrent effect severe punishment of one violator can have on potential violators by quoting the following passage from the Bible:

You shall stone him to death with stones. . . . And all Israel shall hear, and fear, and never again do any such wickedness as this among you.

Deuteronomy 13:10-11.

supports a finding that the Act or regulations were violated, the Secretary is given broad discretion to determine the appropriate sanction. *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187-88, 93 S.Ct. 1455, 1458-59, 36 L.Ed.2d 142 (1973); accord *Blackfoot Livestock*, 810 F.2d at 922.

Because livestock are traded on the basis of weight, a stockyard which does not provide an accurate determination of an animal's weight can have adverse effects upon the market. Thus, Congress has authorized the Secretary to regulate the stockyard industry in an effort to have fair and nondiscriminatory markets. As another appellate court has noted, "[t]he Packers and Stockyards Act does not require that the Secretary prove actual injury before a practice may be found unfair. . . . [T]he Secretary need only establish the likelihood that an arrangement will result in competitive injury to establish a violation." *Farrow*, 760 F.2d at 215.

The Secretary has determined, based on the results of the check-weighs performed on August 11, 1984, and on May 18, 1985, that the stockyard operators weighed livestock "*at less than their true and correct weights*" (emphasis supplied). While we find the weight discrepancies to be substantial evidence that the stockyard was not providing "accurate" and "actual" weights of the livestock traded there, the fact that the livestock weighed more upon reweighing is not *per se* evidence that the second weight was the correct weight and, therefore, that the stockyard operators were indeed weighing livestock "*at less than their true and correct weights.*" The record is devoid of any evidence which indicates what the "true and correct weight" was for the animals reweighed on August 11, 1984, and May 18, 1985. The Packers and Stockyards Administration admits that a check-weigh is not designed to determine the accuracy of a scale. Although the fact that the animals had been held without food or water between weighing and weighed more upon reweighing lends credence to the conclusion that the first weighing of the livestock did not yield their actual weights that fact alone does not suffice as substantial evidence that the second, higher weights were the correct weights of the animals. Accordingly, the results of the check-weighs, while substantial evidence that the stockyard was not being run in accordance with the Act's weighing procedures, do not qualify as substantial evidence that the stockyard operators weighed livestock "*at less than their true and correct weights.*" Thus, this finding is not sustained.

The weight discrepancies discovered on August 11, 1984, and May 18, 1985, support the determinations that 7 U.S.C. §§ 205, 208, 213(a) and 221 were violated by the stockyard operators because these statutory provisions prohibit the use of "unfair" or "deceptive" practices by a stockyard in connection with the purchase and sale of livestock and require that the Secretary's regulations be complied with. Although there is no evidence in the record that the stockyard operators intentionally set out to deceive or cheat any individuals patronizing the stockyard, nothing in the Act requires proof of a particular scienter before a violation of the statute may be found. The harm Congress has authorized the Secretary to prevent is the harm that has been

proven here, purchases and sales of livestock on the basis of weights which are "deceptive" because it has been shown that they are inaccurate.

For similar reasons, the findings that the stockyard operators violated 9 C.F.R. §§ 201.43, 201.49, 201.71, 201.73 and 201.73-1 are supported by substantial evidence in the record. These regulations require that "accurate" and "true" weights be taken and that the stockyard be operated in accordance with the Secretary's regulations. The weight discrepancies are substantial evidence that the weights recorded by the stockyard were not "accurate" and "true." In addition, Terry and Ray Lemons admitted that they were not operating the scale in compliance with the regulations. Accordingly, these findings, too, are sustained.

We do not sustain, however, the determination that the stockyard operators willfully violated the Act. We are cognizant of the fact that the "breadth of discretion" Congress has given the Secretary to determine appropriate sanctions, authorizes the Secretary "to employ that sanction as in his judgment best serves to deter violations and achieve the objectives of [the] statute." *Butz v. Glover Livestock*, 411 U.S. at 187-88, 93 S.Ct. at 1459. Moreover, like the Eighth Circuit, we acknowledge that nothing in 7 U.S.C. § 204, which authorizes suspensions, "confines its applications to cases of 'intentional and flagrant misconduct' or denies its application in cases of negligent or careless violations." *Farrow*, 760 F.2d at 216 (quoting *Butz v. Glover Livestock*, 411 U.S. at 187, 93 S.Ct. at 1458).

Section 558(c) of the Administrative Procedure Act, 5 U.S.C. § 558(c), does limit the Secretary's discretion, however. See *Capitol Packing Co. v. United States*, 350 F.2d 67, 78 (10th Cir. 1965). The Secretary admits in his brief that section 558(c) limits his authority to suspend registrations under the Act absent a finding of willfulness. He argues that the JO was correct in his "alternative holding" that "willfulness is not an issue in this case" because the August 21, 1984, letter to the stockyard operators, which warned that future noncompliance could result in a suspension of their registration under the Act, satisfies the demands of section 558(c).

We agree that the JO's "alternative holding" is correct. Section 558(c) requires that, unless an agency licensee has willfully violated a "lawful requirement" or has endangered "public health, interest, or safety," the licensee must be given written notice "of the facts or conduct which may warrant . . . [suspension]; and . . . opportunity to demonstrate or achieve compliance with all lawful requirements." 5 U.S.C. § 558(c). Certainly by the time of the May 18, 1985, check-weigh, the stockyard operators had been notified that they had not operated in accordance with the Act in the past, but this fact does not mean that substantial evidence exists to uphold the conclusion that they were operating with other than a good faith intent to comply with the Act at the time of both check-weighs.

Yet while the determination that the violations were willful is not supported by the record, such a finding is unnecessary to uphold the

suspension. As the JO concluded, the August 21, 1984, letter from the Regional Supervisor of the Packers and Stockyards Administration put the stockyard operators on notice that they were not in compliance with the Act and gave them an opportunity to comply. Regardless of what may have caused the weight discrepancies, it was the stockyard operators' responsibility to insure that their scale was functioning properly and that stockyard procedures conformed to the Act's requirements. The results of the May 18, 1985, check-weigh support the JO's determination that compliance was not achieved after this notice and opportunity was provided. Accordingly, the suspension comports with the requirements of section 558(c) and, therefore, is sustained.⁷

III

The stockyard operators contend that they were deprived of due process during the administrative proceedings because both the ALJ and the JO refused to allow them to enter into evidence photographs of the part of the scale they claimed caused the weight discrepancies. The regulations allow evidence to be excluded if it "is immaterial, irrelevant, or unduly repetitious, or . . . is not of the sort upon which responsible persons are accustomed to rely." 7 C.F.R. § 1.141(g)(1)(iv).

The ALJ excluded the photographs stating, "I really can't tell what they are. I mean, there is no relation to the whole scale, and there are no other pictures orienting or designating where this spot is. It could be any scale any place. There is no identification that this is the scale at Cumberland City." Terry Lemons testified at the hearing that the photographs were taken after the May 18, 1985, check-weigh. Thus, the facts indicate that the photos arguably were irrelevant to the issues presented at the hearing. Moreover, the stockyard operators have not demonstrated how they were prejudiced by the failure to have the photographs admitted. Both the ALJ and the JO considered their argument that the scale was malfunctioning. Under these

⁷The stockyard operators also have challenged the severity of the civil penalty part of their sanction. The amount of the penalty is sustained for, as we stated recently in a similar challenge to a sanction under the Act,

[t]his court does not review administrative agency sanctions for reasonableness, or for whether they comport with our ideas of justice. The Supreme Court clearly held in *Butz v. Glover Livestock [Comm'n] Co.*, 411 U.S. 182, 187-88, 93 S.Ct. 1455, 1458-59, 36 L.Ed.2d 142 (1973), that those determinations are for the agency:

....

The sanction . . . [is] among those permitted by the authorizing statute and the departmental regulation, and the statute and regulation themselves are not challenged.

ver, 1030 (quotation omitted).

circumstances, we conclude that the refusal to admit this evidence did not deprive the stockyard operators of due process.

The stockyard operators also charge that they were deprived of due process because of JO Campbell's "institutional 'bias' . . . that tends to result in the USDA ruling in its favor in these cases, regardless of the people involved," and because of his well-known and strongly held views in favor of severe punishment in order to foster deterrence.

While we recognize that the discretion afforded to the administrative officer under *Butz* is very large, and is here upheld, we do note disturbing instances of what may appear to be a punitive mentality overriding individual considerations.⁸ As this court noted in *Garver*, a judge's decisions are not biased simply because the judge has a particular view of the law. *Garver*, 1031 (citing *First Nat'l Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1337 (6th Cir. 1987) (collecting cases)). Also, as was the case in *Garver*, "there is no indication whatsoever that Campbell did not function in a judicial capacity, or that he entertained preconceived notions as to a sanction in this particular case." *Id.* at 1031.

Nevertheless, a judge should be careful not to give the impression that a particular view of the law prevents a careful consideration of the law and facts applicable to any given case. When an entire career has been spent in the service of one governmental agency⁹, it can be easy for a judge to slip into a stance that may appear to be advocating, rather than judging, those interests. We do not believe that such a line has been crossed in this case, but we note that it may appear to reasonable observers that there has been a near approach to it.

⁸For example, in the appendix to his decision in this case, the JO states, "Frequently, I infer that certain conduct was intentional and done with knowledge of unlawfulness (for the benefit of reviewing judges who may dislike my hard-nosed sanction), . . . but the sanction would be the same irrespective of those circumstances."

⁹Campbell obtained his law degree from the George Washington University Law Center in 1949. He was appointed JO in January 1971 after, in his own words, "having been involved with the Department's regulatory programs since 1949 (including 3 years' trial litigation; 10 years' appellate litigation relating to appeals from the decisions of the prior Judicial Officer; and 8 years as administrator of the Packers and Stockyards Act regulatory program) (December 1962-January 1971)." See *In re Parchman*, 46 A.D. ___, P. & S. No. 6602 slip op. at 1a n. **; 1987 Federal Staff Directory at 906.

IV

We have considered the stockyard operators' challenge to the Secretary's order and have concluded that not all of the Secretary's determinations are supported by substantial evidence in the record when viewed as a whole. Nonetheless, for the reasons stated above, the Secretary's order, including the suspension of the stockyard operators' registration under the Act for a period of 90 days, is affirmed.

DISCIPLINARY DECISIONS

In re: AMPEX MEATS CORPORATION and LAURENCE B. GREENBURG.

P&S Docket No. 6834.

Decision and Order filed June 3, 1988.

Failure to pay for meat - sanction policy.

Allan Kahan, for Complainant.

Joseph Delcore, Everett, Massachusetts, for Respondents.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under Title II of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), hereinafter referred to as the Act, instituted by a Complaint and Notice of Hearing filed on February 2, 1987, by the Administrator, Packers and Stockyards Administration, United States Department of Agriculture.

The complaint alleges that respondent Ampex Meats Corporation, under the management, direction and control of respondent Laurence B. Greenburg, in connection with the operations of Ampex Meats Corporation, as a packer subject to the Act, purchased meat and meat food products and failed to pay for said meat and meat food products. Said practice is alleged to be in willful violation of section 202(a) of the Act (7 U.S.C. § 192(a)).

On March 2, 1987, respondents filed an answer to the complaint which admitted that the respondents were, prior to March 31, 1986, operating as a packer subject to the Act, admitted that the respondents purchased the beef trimmings set forth in paragraph II of the complaint; stated that on March 31, 1986, a Massachusetts court placed the corporate respondent in receivership; and denied that they failed to pay for the meat or that they otherwise violated the Act. Respondents' answer sets forth the receivership ordered by the Massachusetts court, as a defense to the events which occurred.

An oral hearing was held on October 7, 1987, in Boston, Massachusetts, before Administrative Law Judge Dorothea A. Baker. Respondents were represented by Joseph C. Delcore, Esquire, of Delcore & Delcore, 459 Broadway, Everett, Massachusetts 02149. Complainant was represented by Allan R. Kahan, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, D.C. 20250. Complainant called three witnesses and offered four exhibits. Respondents called one witness. In due course the parties filed briefs, the last brief having been filed March 7, 1988.

Findings of Fact

1. Ampex Meats Corporation, hereinafter referred to as the corporate respondent, was a corporation organized and existing in the State of Massachusetts. Its last mailing address was 52 Sharon Street, Malden, Massachusetts 02148. (Stipulation)

2. The corporate respondent was, at all times material herein:

(a) Engaged in the business of marketing meat and meat food products in commerce acting as a wholesale broker, dealer or distributor in commerce; and

(b) A packer within the meaning and subject to the provisions of the Act. (Stipulation)

3. Laurence B. Greenburg, hereinafter referred to as respondent Greenburg, is an individual whose mailing address is 47 Grace Road, Newton Center, Massachusetts 02159. (Stipulation)

4. Respondent Greenburg was, prior to March 31, 1986:

(a) President and owner of 100 percent of the stock of the corporate respondent; and

(b) Responsible for the management, direction and control of the practices and activities of the corporate respondent. (Stipulation)

5. Respondent Greenburg was a packer within the meaning of the Act and subject to the provisions of the Act. (Stipulation)

6. On March 31, 1986, the corporate respondent was placed in receivership by order of the Middlesex County Superior Court. The appointment of a receiver was the result of an action commenced by a major bank creditor, which action was opposed by respondent. (Stipulation)

7. The corporate respondent, under the management, direction and control of respondent Greenburg, on or about January 27, 1986, purchased 14,279 pounds of beef trimmings, a meat and meat food product, in commerce from Thumann's Provisions, Inc., of Carlstadt, New Jersey, a packer, for a total amount of \$9,131.98. (Stipulation; CX 1-3)

8. Mr. David Guggenheim of Mendocino, California, was the broker in regard to the transaction. (Stipulation) Prior to this transaction, the respondents had conducted other business with said Mr. Guggenheim and neither had experienced any payment problems. With regard to the instant transactions, the respondents dealt entirely with Mr. Guggenheim and never directly with anyone from Thumann's Provisions, Inc.

9. Sometime after January 27, 1986, the beef trimmings referred to in paragraph 7 herein were delivered to and accepted by the respondents. (Stipulation)

10. There was no problem with respect to the quality or quantity of the beef trimmings. (Stipulation)

11. Prior to March 31, 1986, the respondents had not paid for the beef trimmings. (Stipulation)

12. Thumann's Provisions, Inc. was never paid for the beef trimmings sold to respondent on or about January 27, 1986. (Stipulation; TR 100, 101-102)

Conclusions

The facts of this case are not in dispute. However, the sanction deemed appropriate for the practices is in serious dispute by the parties. In addition to the applicable cease and desist order to which respondents have little dispute, complainant seeks the imposition of a civil penalty of Five Thousand Dollars (\$5,000.00) against both the corporate respondent and the individual respondent.¹

Mr. Fred Bridgman, an Auditor with the Financial Branch of the Washington, D.C. Office of the Packers and Stockyards Administration, testified that it is the Administration's policy, in failure to pay for meat cases, to seek a civil penalty of ten percent (10%) of the amount unpaid and owing for meat, with a minimum civil penalty of \$5,000.00. Since the amount involved in this case was \$9,131.98 for unpaid meat, and ten percent (10%) of such amount would be below the policy minimum, the \$5,000.00 minimum civil penalty would be applicable.

The Act provides that the Secretary may assess a civil penalty of up to \$10,000.00 per violation, but sets forth three criteria the Secretary is to consider before imposing a civil penalty. The three factors set forth at section 202(b) of the Act (7 U.S.C. § 192(b)) are: (1) the gravity of the offense; (2) the size of respondents' business; and (3) the effect of the civil penalty on respondents' ability to continue in business.

It goes without saying that failing to pay for meat is a very serious violation of section 202(a) of the Act, and has been found to be an unfair and deceptive practice for more than twenty-five years. *In re: George Ash*, 22 Agric. Dec. 889 (1963); *In re: Goldring Packing Co.*, 21 Agric. Dec. 26 (1962); *In re: Eastern Meats, Inc.*, 21 Agric. Dec. 134 (1962); and *In re: Rotches Pork Packers, Inc., et al.*, P&S Docket No. 6458 (Apr. 13, 1987).

¹This is so stated on Page 4 of Complainant's Initial Brief and the sanction sought by the Department was testified to by Mr. Bridgman as:

Q. What sanction does the Administrator seek to be imposed against Ampex Meats Corporation and Laurence B. Greenburg?

A. We would seek to have a cease and desist order issued as well as a \$5,000.00 civil penalty assessed both jointly and severely against the Respondents. (TR 75)

However, the requested, and adopted order of the complainant is as set forth hereinafter.

Secondly, respondents' business size was far from insubstantial. Respondent Greenburg admitted that Ampex purchased \$4-5,000,000.00 worth of meat products a year, and that it had 13 employees.

The third factor is the effect of the civil penalty on respondents' ability to continue in business. The evidence disclosed that for 1984, the individual respondent had business income of \$33,583.44 and an adjusted gross income of \$34,045.04; and for 1985, he had business income of \$60,000.00, and adjusted gross income of \$59,749.70. (TR 33) For 1986, the individual respondent had an adjusted gross income of \$21,303.00. Clearly, the assessment and payment of the \$5,000.00 civil penalty being sought by complainant would not prevent the individual respondent from continuing in the business as a broker, such as he is presently doing, or even venturing back into the packing business if he should care to do so and could find the financing. There is nothing on the record to rebut the conclusion that the individual respondent could afford to pay the civil penalty without affecting his ability to meet reasonable living expenses and business expenses. His business expenses are minimal. He testified that he has sublet a desk from another broker. Even respondent's testimony and argument at the hearing did not challenge nor contest the assertion that respondent would be able to pay such civil penalty and continue in business.

The primary issue of contention is the size of the civil penalty requested, \$5,000.00, particularly in light of the fact that as a result of complainant's expressed general policy of seeking a minimum civil penalty of \$5,000.00, the amount sought far exceeds the 10 percent formula articulated in the *Rotches* case, as well as more than 50 percent of the amount owed by respondent Ampex to Thumann's.

The respondents maintain that a technical violation of the statute does not warrant a \$5,000.00 civil penalty and that:

Under all the circumstances, it is respectfully submitted that the imposition of such a penalty is both arbitrary and unreasonable and not commensurate with the particular offense. . . .

The respondents contend that since the offense involved the nonpayment of a total bill of \$9,131.98, the sanction is out of proportion to the offense. Further, respondents state: "Concededly, a vendor was not paid, but, considering the amount of money in controversy, this particular offense cannot be considered most grave. Second, although the corporate respondent apparently had a gross business of \$4-5,000,000.00, the individual respondent's income for the years 1984, 1985 and 1986 certainly indicates that business profits were not very substantial. (TR 32-33, Stipulation) Third, because of the corporate respondent's liquidation, the individual respondent was left with no assets from this business. His house was sold to meet living expenses. (TR 35) His present income is not substantial and payment of a civil penalty could severely inhibit his ability to function as a broker."

In seeking a civil penalty of \$5,000.00, the complainant relies upon the testimony of Mr. Fred Bridgman, an Auditor with the Financial Branch of the Washington, D.C. Office of the Packers and Stockyards Administration.

Although *Rotches* is the only litigated decision in which a civil penalty was assessed for failure to pay for meat, civil penalties have been obtained in other cases with similar facts. See, *In re: Otto Doerr & Sons, et al.*, P&S Docket No. 6459 (July 23, 1986); and *In re: Crissman, Inc., et al.*, P&S Docket No. 6460 (Jan. 24, 1986). See also, the recent case of *In re: Mark V. Porter*, P&S Docket No. 6538 (Apr. 28, 1988) wherein it is stated among other things:

Because of its relationship to the matter of sanctions in the present case, the following quotations from the March, 1987, decision in the *Spencer Livestock Commission Co.* case [46 Agric. Dec. _____ (Mar. 19, 1987)] are appropriate:

In addition, the sanctions imposed under the Packers Stockyards Act in recent years have been much more severe than during earlier years, e.g., *In re Welch*, 45 Agric. Dec. [1932 (1986)] (decision as to Benson) (\$10,000 civil penalty and 1-year prohibition from engaging in business subject to the Act); *In re Garver*, 45 Agric. Dec. [1090 (1986) (2-year suspension), *aff'd*, 838 F.2d 470 (6th Cir. 1988) (unpublished)]; *In re Holiday Food Services, Inc.*, 45 Agric. Dec. [1034 (1986) (\$50,000 civil penalty), *remanded*, 820 F.2d 1103 (9th Cir. 1987)]; *In re Com State Meat Co.*, 45 Agric. Dec. [995 (1986)] \$50,000 civil penalty); *In re Blackfoot Livestock Commission Co.*, 45 Agric. Dec. [590 (1986)] (6-month suspension), *aff'd*, 810 F.2d 916 (9th Cir. 1987); *In re Farmers & Ranchers Livestock Auction, Inc.*, 45 Agric. Dec. [234 (1986)] (decision as to Millsbaugh) (5-year suspension, but permitting respondent to be employed as an auctioneer after 1 year); *In re Saylor*, 44 Agric. Dec. [2238 (1985)] (decision on remand) (8-month suspension and \$10,000 civil penalty); *In re ITT Continental Baking Co.*, 44 Agric. Dec. [748 (1985)], *final consent decision*, 44 Agric. Dec. [1971 (1985)] (\$10,000 civil penalty); *In re Powell*, 44 Agric. Dec. _____ (Mar. 7, 1985) (5-year suspension for failure to pay for livestock), *appeal denied*, 44 Agric. Dec. [1220 (1985)] (appeal not timely filed); *In re Mid-West Veal Distributors*, 43 Agric. Dec. 1124 (1984)] (\$77,000 civil penalty, with \$27,000 suspended); *In re Mayer*, 43 Agric. Dec. [439 (1984)] (decision as to Doss) (2-year suspension), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re Peterman*, 42 Agric. Dec. 1848 (1983), *aff'd*, 770 F.2d 888 (10th Cir. 1985) (\$20,000 civil penalty).

In addition, the Judicial Officer set forth in the *Spencer Livestock Commission Co.* case his explanation of sanctions as follows:

In determining sanctions to be imposed by the Department, great weight is given to the recommendation of the officials charged with the responsibility for administering the regulatory program. See *In re Sy B. Gaiber & Co.*, 31 Agric. Dec. 843, 845-46 (1972) (ruling on reconsideration). Such administrative officials, during the day-to-day administration of a regulatory program, develop a "feel" for the severity of sanctions needed to serve as a deterrent to violations that cannot be developed by the Administrative Law Judges or the Judicial Officer, who come in contact with only a small part of the regulatory program.

The recommendation of the administrative officials as to the sanction is not, of course, controlling. For example, if some of the allegations are not proven or if there are mitigating circumstances not taken into consideration by the administrative officials, the sanction may be considerably less than that recommended by them. See, e.g., *In re American Fruit Purveyors, Inc.*, 30 Agric. Dec. 1542 (1971). But if the alleged violations are proven, and it appears that the administrative officials have fully considered the respondent's contentions, the recommendation of the administrative officials as to the sanction needed to serve as an effective deterrent to the respondent and to other potential violators is given great weight.

Thus the *rationale* of the above cited cases, as well as the authorities set forth therein, indicate the sanction policy of the Department of Agriculture which the Administrative Law Judge is required to follow. In other words, the respondent has not shown illegality on the part of the complainant or that it acted beyond the purview of the law.

As Mr. Bridgman testified, the primary reason behind the civil penalty being sought is the hoped for deterrent value such a civil penalty will have on other packers and their payment practices for meat purchases. The need for a sanction consistent with the Department's "severe sanction policy" is clearly indicated by an examination of the facts in this case. Since respondent was operating under the corporate shell, his individual assets were protected from the reach of creditors such as Thumann's. Thumann's expected payment within ten days (TR 28), and the product, ordered on January 27, was probably delivered to the purchaser on January 28 (TR 28). If we assume the date of receipt to start the running of the ten days, payment by respondents would have been due on February 7, approximately seven weeks prior to the court's order imposing the receiver. Respondent Greenburg admitted that although his memory is not altogether clear as to the exact sequence of events during that period, the corporation, Ampex, was able to pay bills, incur expenses, etc., without any particular restrictions and encumbrances by the bank at least through the month of February. Thus, at the very least, respondents had three weeks, *twenty-one* days, in which to make payment to Thumann's, but failed and refused to do so. However, other testimony by

respondent leads us to conclude that the date on which he was no longer able to control the assets of his business was probably on or about March 31, 1986, the date upon which the receiver was appointed to direct the affairs of the corporate respondent. March 31, 1986, was a Monday. Had the Bay Bank of Middlesex sought to interfere with respondents' business accounts prior to the date the receiver was legally appointed, they would have subjected themselves to a substantial law suit from respondents.

Bay Bank of Middlesex was able to request the appointment of a receiver for the corporate respondent as a result of section 105 of chapter 156B of the Annotated Laws of Massachusetts, which provides:

§ 105. Appointment of receivers on failure of corporation to satisfy judgments, etc. If a judgment has been recovered against a corporation and it had neglected for thirty days after demand made on execution to pay the amount due with the officer's fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution sufficient to satisfy the same and the execution has been returned unsatisfied, one or more receivers may be appointed with the powers and duties provided in, and subject to, section one hundred and four.

Respondent, as well as other packers similarly situated, had the power to cut losses while they were manageable; or to get the financial situation in order by making the necessary business decisions to do so. The alternative was to subject unsuspecting meat sellers, like Thumann's, to the risk of nonpayment by his continued operations. Respondent Ampex's financial situation was bleak and respondent Greenburg had no realistic expectation of any positive change. Complainant believes that the civil penalty sought will help persuade individuals in the same situation as respondents to discontinue their business *prior* to violating the Act, and not after such violations have occurred.

The respondents have not shown that the complainant's position is unreasonable, or, that the imposition of a civil penalty is unjustified.

For all of the above-mentioned reasons, and after due consideration to respondents' contention, the following order is issued.

Order

Respondent Ampex Meats Corporation, its officers, directors, agents and employees, directly or through any corporate or other device, and respondent Laurence B. Greenburg, as an officer, director, agent or employee of Ampex Meats Corporation, or through any corporate or other device, in connection with their operations subject to the Act, shall cease and desist from:

1. Failing to pay, when due, for meat or meat food products; and
2. Failing to pay for meat or meat food products.

Respondent Laurence B. Greenburg is assessed a civil penalty of Five Thousand Dollars (\$5,000.00).²

All motions, requests and suggestions of the parties have been considered and, to the extent, if any, not ruled upon and which are inconsistent with this Decision and Order, they are hereby denied.

This Decision and Order shall become final Thirty-Five (35) days after service thereof unless appealed to the Secretary's Judicial Officer within Thirty (30) days as provided by the Rules of Practice and Procedure, 7 C.F.R. 1.131, *et seq.*

Copies hereof shall be served upon the parties.

[This decision and order became final July 18, 1988.--Editor.]

In re: GARFIELD LIVESTOCK, INC.
P&S Docket No. D-88-35.
Order filed July 29, 1988.

Shariene Lassiter, for Complainant.
Ernest Van Hooser, Kansas City, Missouri, for Respondent.
Order issued by Paul N. Kane, Administrative Law Judge.

SUPPLEMENTAL ORDER

On June 30, 1988, an order was issued in the above-captioned matter, which, *inter alia*, suspended respondent as a registrant under the Act for a period of 14 days and thereafter until it demonstrates that it is solvent and that the shortage in the Custodial Account for Shippers' Proceeds, hereinafter referred to as custodial account, has been eliminated.

Upon the request of the Department's counsel filed July 28, 1988, and upon the representations of the Department's counsel,

IT IS HEREBY ORDERED THAT the suspension provision of the order issued on June 30, 1988, be terminated. The order shall remain in effect in all other respects. Respondent is ordered to submit a financial statement and custodial account report on a quarterly basis to begin on September 30, 1988.

² See Footnote No. 1, *supra*.

In re: LINTON LIVESTOCK MARKET, INC., and KELLY L. FISCHER.
P&S Docket No. D-88-7.
Order filed July 1, 1988.

Ben Bruner, for Complainant.
Arnold V. Fleck, Linton, North Dakota, for Respondents.
Order issued by Victor W. Palmer, Chief Administrative Law Judge.

SUPPLEMENTAL ORDER

On June 3, 1988, an order was issued in the above-captioned matter which, *inter alia*, suspended respondents as a registrant under the Act for a period of 14 days and thereafter until their liabilities no longer exceed their current assets and the shortage in their custodial account is correct.

The respondents' current liabilities no longer exceed their current assets and the shortage in their custodial account has been corrected. Accordingly,

IT IS HEREBY ORDERED that the suspension provision of the order issued June 3, 1988, shall be terminated after the expiration of the 14 day period. The order shall remain in full force and effect in all other respects.

In re: DONALD SAGGUS.
P&S Docket No. D-88-14.
Order filed July 27, 1988.

Ben Bruner, for Complainant.
Melvin P. Kopecky, Washington, Georgia, for Respondent.
Order issued by Paul Kane, Administrative Law Judge.

SUPPLEMENTAL ORDER

On April 28, 1988, an order was issued in the above-captioned matter which, *inter alia*, suspended respondent as a registrant under the Act until he was in full compliance with the bonding requirements of the Packers and Stockyards Act and the regulations promulgated thereunder.

Counsel for the Department of Agriculture have advised, by request filed July 15, 1988 that the respondent is now in full compliance with the bonding requirements of the Packers and Stockyards Act and the regulations promulgated thereunder. Accordingly,

IT IS HEREBY ORDERED that the suspension provision of the order issued April 28, 1988, is terminated. The order shall remain in full force and effect in all other respects.

In re: SPARTA LIVESTOCK COMPANY, INC., and RONNYE RICHARDS.
P&S Docket No. D-88-43.
Order filed July 19, 1988.

Peter Train, for Complainant.
Ernest D. Bennett, III, Sparta, Tennessee, for Respondents.
Order issued by Victor W. Palmer, Chief Administrative Law Judge.

SUPPLEMENTAL ORDER

On July 19, 1988, an order was issued in the above-captioned matter which, *inter alia*, suspended respondent as a registrant under the Act until such time as it demonstrates that any deficit in its Custodial Account for Shippers' Proceeds has been eliminated.

Respondent Sparta has now demonstrated that it has eliminated any deficit in its Custodial Account for Shippers' Proceeds. Accordingly,

IT IS HEREBY ORDERED that the suspension provision of the order issued July 19, 1988, is terminated. The order shall remain in full force and effect in all other respects.

In re: SPARTA LIVESTOCK COMPANY, INC., and RONNYE RICHARDS.
P&S Docket No. D-88-43.
Order filed July 19, 1988.

Peter Train, for Complainant.
Ernest D. Bennett, III, Sparta, Tennessee, for Respondents.
Order issued by Victor W. Palmer, Chief Administrative Law Judge.

DISMISSAL OF PROCEEDING PERTAINING TO RONNYE RICHARDS

Counsel for complainant has advised that respondent Ronnye Richards is now deceased and that this proceeding be dismissed as it pertains to him.

Accordingly, the proceeding as it pertains to Ronnye Richards is hereby dismissed.

**In re: B.J. (JIM) VANDEBERG, LEWISTON LIVESTOCK MARKET, INC.,
and DOUG BICKFORD.
P&S Docket No. 6719.
Order filed July 21, 1988.**

Kenneth H. Vail, for Complainant.
C.T. Tad Sanders, Kansas City, for Respondents.
Order issued by Edward H. McGrail, Administrative Law Judge.

**MODIFICATION OF ORDER WITH RESPECT TO
B.J. (JIM) VANDEBERG**

Upon motion of complainant, the civil penalty assessed against B.J. (Jim) VandeBerg in this matter is reduced to \$200.00.

**In re: GREG WADE and BILLY JACK WRIGHT.
P&S Docket No. D-88-18.
Decision filed May 10, 1988.**

Dealer - market agency - failure to pay, when due, for livestock - insufficient funds check.

Sharlene Lassiter, for Complainant.
Respondent, Pro se.
Decision and Order issued by Paul N. Kane, Administrative Law Judge.

**DECISION AND ORDER UPON ADMISSION OF FACTS
BY REASON OF DEFAULT (GREG WADE)**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*), herein referred to as the Act, instituted by a complaint filed by the Administrator, Packers and Stockyards Administration, United States Department of Agriculture, charging that respondent Greg Wade willfully violated the Act and regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*).

Copies of the complaint and Rules of Practice (7 C.F.R. § 1.130 *et seq.*) governing proceedings under the Act were served upon respondent Greg Wade by the Hearing Clerk by certified mail. Respondent Greg Wade was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent Greg Wade has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondent Greg Wade's failure to file an answer, are adopted and set forth herein as Findings of Fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. (a) Greg Wade, hereinafter referred to as respondent Wade, formerly doing business as J & W Cattle Co., a partnership, is an individual whose mailing address is 1001 Santa Fe, Canyon, Texas 79015.

(b) Respondent Wade, at all times material herein, was engaged in the business of a dealer buying and selling livestock in commerce for his own account, and of a market agency buying livestock in commerce for the account of others.

(c) Respondent Wade has never been registered with the Secretary of Agriculture in any capacity subject to the Act.

2. Commencing on or about January 23, 1985, and continuing until at least June 11, 1986, respondent Wade engaged in business as a dealer and market agency, buying and selling livestock in commerce for his own account and the account of others without maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

3. (a) Respondent Wade, in connection with his operations subject to the Act, on or about June 6, 1986, purchases 138 head of livestock from Cattleman's Livestock Commission Co., Dalhart, Texas, and in purported payment issued a check which was returned unpaid by the bank upon which it was drawn because respondent Wade did not have sufficient funds available in the account upon which such check was drawn to pay such check when presented.

(b) Respondent Wade, in connection with his operations subject to the Act, on or about the date and in the transaction set out in paragraph III(a) of the complaint, purchases livestock and failed to pay, when due, the full purchase price of such livestock.

(c) As of February 19, 1987, there remained unpaid a total of at least \$14,000.00 for such livestock purchase.

Conclusions

By reason of the facts found in Finding of Fact 2 herein, respondent Wade willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

By reason of the facts found in Finding of Fact 3 herein, respondent Wade willfully violated section 312(a) and 409 of the Act (7 U.S.C. §§ 312(a), 228b).

Order

Respondent Greg Wade, his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and

the regulations, without filing and maintaining a reasonable bond or its equivalent, as required by the Act and the regulations;

2. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented;

3. Failing to pay, when due, the full purchase price of livestock; and

4. Failing to pay the full purchase price of livestock.

Respondent Greg Wade shall not be registered to engage in business as a dealer or market agency subject to the Packers and Stockyards Act for a period of five (5) years, and pursuant to section 303 of the Act (7 U.S.C. § 203) he is prohibited from engaging in business subject to the Act for a period of five (5) years, provided, however, that upon application to the Packers and Stockyards Administration a supplemental order may be issued permitting respondent's registration at any time after the expiration of 120 days upon demonstration by respondent Wade that all unpaid sellers have been paid in full, and provided further that this order may be modified upon application to the Packers and Stockyards Administration to permit respondent's salaried employment by another registrant after the expiration of the 120 days.

The provisions of this order shall become effective on the sixth day after service of this decision on respondent Wade.

This decision and order shall become final without further proceeding 35 days after service hereof unless appealed to the Judicial Officer within 30 days after service (7 C.F.R. §§ 1.139, 1.145).

Copies hereof shall be served on the parties.

[This decision and order became final July 18, 1988.--Editor.]

**In re: WESTERN STATES CATTLE COMPANY, TOM M. CROWL,
GARY D. DeHAAN, and MERRITT BROWN.**

P&S Docket No. 6592.

Order filed July 18, 1988.

Dennis Becker, for Complainant.

David E. Vohs, Sioux City, Iowa, for Respondents.

Order issued by Donald A. Campbell, Judicial Officer.

STAY ORDER

The attorney for respondents has requested a stay of the suspension provisions previously issued in this case pending the outcome of proceedings for judicial review. The suspension provisions of the order issued herein are stayed pending the outcome of the appeal.

The cease and desist provisions of the order shall remain in effect as to respondent Brown.

REPARATION DECISION

**CHARLES SHOEMAKERS, WELLS RANCH INC., and LESTER WELLS
v. ERICSON LIVESTOCK MARKET, INC., and RONALD E. WILSON.
P&S Docket No. 6931.
Order filed July 7, 1988.**

Richard A. Koehler, Geneva, Nebraska, for Complainants.
Warren Argonbright, Valentine, Nebraska, for Respondents.
Peter V. Train, Presiding Officer.

Order issued by Donald A. Campbell, Judicial Officer.

ORDER OF DISMISSAL

For good cause shown, respondent Wilson's motion to withdraw cross-claim against Marlin Luber is hereby granted.

The cross-claim against Luber is therefore dismissed.

PERISHABLE AGRICULTURAL COMMODITIES ACT

Court Decisions

MELVYN SIEGEL, Petitioner v. RICHARD E. LYNG, SECRETARY OF AGRICULTURE, UNITED STATES DEPARTMENT OF AGRICULTURE, et al. and UNITED STATES OF AMERICA.

No. 84-1047.

Decided July 12, 1988.

Responsibly connected person-One-year employment bar-Due process-Bill of attainder.

The president, director and majority shareholder of a corporation licensed under the Perishable Agricultural Commodities Act found in earlier litigation to be "responsibly connected" with the corporation (*Finer Foods Sales Co., Inc. v. Block*, 708 F.2d 774 (D.C. Cir. 1983)), challenges ensuing one year employment bar under the PACA on statutory grounds and on ground that the PACA violates Due Process and Bill of Attainder proscriptions. The D.C. Circuit affirmed the employment bars issued by officials of the Departments as constitutionally valid and in accordance with the correct construction of the PACA and proper procedures.

John H. Vetne, for Petitioner.

Harry S. Gold, James Michael Kelly, Raymond W. Fullerton, Margaret M. Breinholt, and Aaron Kahn, for Respondent.

UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

Before: WALD, *Chief Judge*, ROBINSON and STARR, *Circuit Judges*.

Opinion for the Court filed by *Chief Judge* WALD.

WALD, *Chief Judge*:

I. INTRODUCTION

Melvyn Siegel, petitioner, was President, Director, and majority shareholder of Finer Foods Sales Company (Finer Foods). Upon citation for flagrant, repeated violations of the Perishable Agricultural Commodities Act, as amended (Act or PACA), 7 U.S.C. §§ 499a-499s, see *Finer Foods Sales Co., Inc. v. Block*, 708 F.2d 774 (D.C. Cir. 1983) (affirming Secretary of Agriculture's decision that Finer Foods violated Act), Finer Foods sold all its assets to L.M. Sandler & Sons, Inc. (Sandler & Sons). Sandler & Sons also hired Siegel.

The present action involves the subsequent efforts by the Agriculture Department's Agricultural Marketing Service, Fruit and Vegetable Division (AMS) to enforce PACA Section 8(b) employment restrictions against Siegel because of his being "responsibly connected" with Finer Foods. Siegel challenges his one year employment bar on statutory grounds as well as on the ground that the statute violates Due Process and Bill of Attainder proscriptions. Because we hold that neither constitutional argument is valid and that the Department construction of PACA is correct, we affirm the employment bar that was issued pursuant to proper procedures.

II. BACKGROUND

A. *Legislative Background*

PACA was enacted in 1930 as a licensing scheme to regulate transactions in perishable agricultural commodities. The legislation was prompted by unfair dealer practices in the industry, which harmed growers and shippers alike. The statutory mechanism erected to correct these abuses was succinctly described by this Court in *Quinn v. Butz*, 510 F.2d 743, 746-47 (D.C. Cir. 1975), as follows:

In broad outline, the Act regulates the shipment of perishable agricultural commodities in interstate and foreign commerce through a system of licensing and administrative supervision of the conduct of licensees. Commission merchants, dealers and brokers in such commodities must obtain from the Secretary of Agriculture a license as a precondition to doing business.¹ By Section 2, licensees are forbidden to engage in specified unfair practices,² which include failure to make full payment promptly for commodities dealt in.³ An unfair practice subjects the licensee to liability to the injured party for damages, recoverable either in a proceeding before the Secretary or by suit in court.⁴ The Secretary is authorized to investigate complaints of unfair practices⁵ and, finding a violation, to issue a reparation order requiring the offending licensee to

¹[Footnotes renumbered] Perishable Agricultural Commodities Act §§ 3, 4, 7 U.S.C. §§ 499c, 499d (1970).

²*Id.* § 2, 7 U.S.C. § 499b (1970).

³*Id.* § 2(4), 7 U.S.C. § 499b(4) (1970).

⁴*Id.* § 5, 7 U.S.C. § 499c (1970).

⁵*Id.* § 6, 7 U.S.C. § 499f (Supp. III 1973).

pay damages.⁶ Failure to obey the order automatically suspends the license during noncompliance.⁷

The Secretary is also empowered to suspend or revoke licenses for unfair practices,⁸ and to limit employment within the industry of those who violate the Act and those who are "responsibly connected" with violators.⁹ Section 8(b) of the Act, in respects highly relevant to this case, provides that except with the Secretary's approval no licensee may employ any person, or anyone "responsibly connected" with a person, whose license has been revoked or is currently suspended, or who has been found to have committed any flagrant or repeated violation of Section 2, or against

⁶*Id.* § 7(a), 7 U.S.C. § 499g(a) (Supp. III 1973).

⁷"Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied." *Id.* § 7(d), 7 U.S.C. § 499g(h) (1970).

⁸"Whenever (a) the Secretary determines, as provided in [§ 6], that any commission merchant, dealer, or broker has violated any of the provisions of [§ 2], or (b) any commission, merchant, dealer, or broker has been found guilty in a Federal court of having violated [§ 14(b)], the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender. . . ." *Id.* § 8(a), 7 U.S.C. § 499h(a) (1970).

⁹*Id.* § 8(b), 7 U.S.C. § 499h(b) (1970), which in relevant part provides:

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—(1) whose license has been revoked or is currently suspended by order of the Secretary; (2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or (3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 499g(c) of this title. . . .

whom there is an unpaid reparation order issued within two years.¹⁰ Section 1(9), another provision bearing importantly on this case, specifies that a person is "responsibly connected" with an offending licensee if he is affiliated with the licensee as officer, director or holder of more than 10% of its outstanding stock.¹¹

Id. at 746-47.

B. *Factual Background*

The factual history of the case is set out in *Finer Foods Sales Co., Inc. v. Block*, 708 F.2d 774 (D.C. Cir. 1983). Briefly, petitioner-Siegel was President, Director, and majority shareholder of Finer Foods, a company adjudged to have committed flagrant and repeated violations of PACA. *Id. see also* Joint Appendix (J.A.) at 2, 35. Finer Foods' assets were sold to Sandler & Sons in July, 1979, and on August 1, Sandler & Sons hired Siegel as an employee. Sandler & Sons is also a PACA licensee.

Because AMS was pursuing charges of PACA violations by Finer Foods, the agency notified Sandler & Sons that Siegel's responsible connection to Finer Foods would disqualify him from industry employment for one year. *See id.* at 2-4. Once Finer Foods was found to have violated the Act, AMS sent formal notice of Siegel's employment ineligibility. *See id.* at 27, 35. Siegel did not make timely contest of this responsible connection conclusion. Instead, on January 4, 1984, Siegel filed the present opposition to this employment restriction, claiming that the bar violates statutory and constitutional protections.

III. ANALYSIS

A. *Employment Bar*

Siegel's statutory challenge to PACA--his objection to a sanction that forbids employment by a licensee even in positions unrelated to the PACA regulatory scheme--must fail as contrary to express statutory language. Siegel urges this Court to exempt non-PACA work for diversified PACA licensees from the employment bar against sanctioned persons. *See* Brief of Petitioner at 20-27. Yet section 499h(b) states that

¹⁰See [sic] note [9] *supra*. The Secretary is authorized to approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation award, or after one year following the revocation or finding of flagrant or repeated violation, upon the posting of bond. *Id.* The Secretary may also approve employment without bond after the expiration of two years from the effective date of the disciplinary order. *Id.*

¹¹The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association. . . ." *Id.* § 1(9), 7 U.S.C. § 499a(9) (1970).

no licensee shall employ any person, or any person who is or has been responsibly connected with any person--(1) whose license has been revoked or is currently suspended by order of the Secretary; (2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title. . . .

7 U.S.C. § 499h(b) (emphasis added). *Finer Foods* was found by this court to have committed such flagrant and repeated violations. *Finer Foods Sales Co., Inc. v. Block*, 708 F.2d 774 (D.C. Cir. 1983). Not only is section 499h(b)'s employment bar phrased as an absolute, but also the Act elsewhere defines employment as "*any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.*" 7 U.S.C. § 499a(10) (emphasis added). This Court in *Quinn* explicitly remarked that Congress had approved a "clear and equitable" rule that denied him [PACA violator] *any* employment, for the pertinent period, rather than require a new determination of precisely which positions were closed." 510 F.2d at 756 (emphasis added) (footnote omitted).

Indeed, Congress amended the Act in 1963 precisely to clarify this comprehensive bar. Immediately prior to the 1962 amendments, the Secretary was authorized to sanction licensees only when these employers hired a violator (or responsibly connected person) for a "responsible position." Because this determination proved difficult to administer, the qualification was deleted altogether in 1962. Congress explained the deletion with statements that prove an intent to incorporate an expansive employment bar. The House Committee on Agriculture, for example, stated:

At present the act applies only to the employment of a person in a responsible position. This has caused serious difficulties due to the problem of delineating what constitutes a responsible position under all circumstances and the difficulty of ascertaining the true nature of the employee's relationship with the licensee.

H.R. Rep. No. 1546, 87th Cong., 2d Sess. 8 (1962). Likewise, an earlier report from the same committee observed.

Experience has demonstrated that it is not possible to obtain satisfactory evidence to prove that a person holds a 'responsible' position if his employer and he want to hide their working arrangement. . . . It is believed that the limitations on employment should apply to anyone on the payroll of a licensee with the standard debarment periods or bonding requirements dependent on the nature of the violation.

House Committee on Agriculture Hearings on Perishable Agricultural Commodities, 87th Cong., 1st Sess. 15 (1961). This investigatory difficulty, compounded in cases where, as here, the new employer-licensee has acquired all the assets of the violating company, confirms the reasonableness of Congress' amendment barring any employment for the proscribed period.

B. *Bill of Attainder*

Siegel attacks the PACA employment bar as contrary to the Bill of Attainder Clause, Article I, § 9 of the United States Constitution.¹² However, the very definition of a Bill of Attainder--a "law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial," *Selective Serv. Sys. v. Minnesota Public Interest Research Group*, 468 U.S. 841, 846-47 (1984) (quoting *Nixon v. Administrator of General Services*, 433 U.S. 425, 468 (1977))--points to its inapplicability to PACA's employment restrictions. This provision does not infringe the Bill of Attainder Clause because the statutory presumption both is rebuttable in adjudicatory proceedings and also is nonpunitive in nature.

Broadly speaking, the Bill of Attainder Clause is a further constitutional iteration of the separation of powers logic that structures our government. Whereas Congress may properly legislate to bar persons with certain characteristics from specific activities, the task of determining who possesses these characteristics is generally assigned to the judiciary. See *United States v. Brown*, 381 U.S. 437, 454 n.29 (1965). Section 499h(b) of PACA describes the characteristic that may disqualify persons from industry employment as *responsible connection* with entities that violate the Act. Nonetheless, as construed by this Court, characterization as a "responsibly connected" person is rebuttable, not absolute. See *Quinn*, 510 F.2d at 751. In that case, this Court required corporate veil piercing on the issue of responsible connection; ultimately, the Court exonerated petitioner-Quinn as not having been responsibly affiliated with the culpable company because his officership was shown to be entirely nominal.

This Court twice has expressly reaffirmed this reading of section 499a(9). See *Veg-Mix, Inc. v. United States Department of Agriculture*, 832 F.2d 601, 611 (D.C. Cir. 1987); *Minotto v. United States Department of Agriculture*, 711 F.2d

¹²Siegel's Due Process challenge, as noted at oral argument, parallels his Bill of Attainder argument. Because we adhere to the *Quinn* characterization of the employment bar as a rebuttable presumption, we do not need to consider case law overturning irrebuttable presumptions. Numerous courts have affirmed Congress' rational purpose under the Commerce Clause to regulate the free flow of perishable agricultural commodities through PACA restrictions. See, e.g., *Rothenberg v. H. Rothstein & Sons*, 183 F.2d 524, 526 (3d Cir. 1950); cf. *Mobile, J. & K. C.R. Co. v. Turnipseed*, 219 U.S. 35, 43 (1910) (legislative presumption of fact must be based on rational inference).

406, 408 (D.C. Cir. 1983).¹³ Petitioner erroneously attempts to minimize this Court's departure from other circuits' irrebuttable presumption analysis of section 499a(9) by arguing that *Martino v. United States Department of Agriculture*, 801 F.2d 1410 (D.C. Cir. 1986), permits no consideration of matters beyond the *bona fides* of the persons in question. See Reply Brief of Petitioner at 3-4 n.1. However, *Martino* itself states that in a hearing, the charged person may show that she "somehow . . . does not belong in any of the statutory categories of responsible connection. . . ." *Martino*, 801 F.2d at 1414 (emphasis added). More decisive, in *Veg-Mix*, this Court expressly applied our decisional law's culpability concept, noting *Minotto's* rule that a "finding of liability under section 499h of the Act must be premised upon personal fault or the failure to "counteract or obviate the fault of others."" *Veg-Mix*, 832 F.2d at 611 (quoting *Minotto*, 711 F.2d at 408 (quoting *Quinn*, 510 F.2d at 756)) (footnote omitted).

The instant case involves a record that fully supports the Secretary's determination that Siegel was personally at fault or had the capacity to prevent others' fault, hence was "responsibly connected" with Finer Foods during the time when the company violated the Act. Cf. *Zwick v. Freeman*, 373 F.2d 110, 115 (2d Cir.) ("it is inconceivable that petitioners were unaware of their financial condition and unaware that every additional transaction they entered into was likely to result in another violation of the Commodities Act"), *cert. denied*, 389 U.S. 835 (1967). See generally, *Community Nutrition Institute v. Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985) (agency may dispense with hearing when no material issue of fact exists), *cert. denied*, 475 U.S. 1123 (1986). Siegel was President and Director of the company throughout the period when violations occurred. This is dissimilar to the nominal vice president in *Quinn*, to the clerical employee designated director in *Minotto*, or to petitioner-Harris' absence from the violating company in *Veg-Mix*. Siegel also held three-fourths of the company's stock. By contrast, petitioners in *Quinn* and *Minotto* possessed no shares at all. Most clearly in *Martino*, this Court held that approximately twenty per cent stock ownership would suffice to make a person accountable for not controlling delinquent management. See also *Veg-Mix*, 832 F.2d at 611 ("Majority ownership obviously suffices [for a finding of responsible connection].") In his capacity as President and Director, Siegel himself was the delinquent management. Moreover, his was the majority shareholder voice. Thus, his, "actual, significant nexus with the violating company" is uncontrovertible, *Martino*, 801 F.2d at 1414 (citing *Minotto*), indeed, the nexus is precisely that envisioned by Congress when it employed the phrase "responsibly connected."

Also determinative, we find that section 499h(b) does not inflict "punishment" forbidden by the Bill of Attainder Clause, but rather is a statutory civil penalty to assist regulatory enforcement of the Act. *See Zwick v. Freedman*, 373 F.2d 110, 119-20 (2d Cir.) (section 499h(b) is not Bill of Attainder), *cert. denied*, 389 U.S. 835 (1967); *see also Birkenfield v. United States*, 369 F.2d 491, 494 (3d Cir. 1966) (section 499h(b) is not unconstitutional). The line of Supreme Court law on the Bill of Attainder Clause indicates that legislation will survive Bill of Attainder attack if the statute furthers nonpunitive legislative purposes. *See Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841, 852 (1984) (inquiry is whether the law under challenge, "viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes") (citing) *Nixon v. Administrator of General Services*, 433 U.S. 425, 475-76 (1977); *DeVeau v. Braisted*, 363 U.S. 144, 160 (1960) ("The question . . . is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation. . . ."); *Hawker v. New York*, 170 U.S. 189, 196 (1897) (same).

Legitimate justifications for the employment restriction, noted earlier, are evident, indeed are paramount, both in the AMS's present use of the temporary bar, and also in the legislative record relevant to the 1962 amendments. *See supra* Section III.A; *see also Whitney v. Heckler*, 780 F.2d 963, 974 (11th Cir. 1986) (approving *Zwick* finding that PACA employment restrictions are reasonable regulatory-enforcement scheme, hence escape Bill of Attainder prohibition). This Court recently echoed Congress' express purpose behind the PaCA enforcement regime, including the employment restrictions: namely, that the Act's "special sanctions against dishonest or unreliable dealing" "help instill confidence in parties dealing with each other on short notice, across state lines and at long distances. . . ." *Veg-Mix*, 832 F.2d at 604.¹⁴ This legislative and executive resolve to guarantee that PACA transactions by firms employing persons "responsibly connected" to disciplined licensees be conducted with easy-to-monitor, scrupulous compliance with the Act is ample justification for the temporary employment bar.

¹⁴Note that Congress employs a "responsibly connected" classification, coupled with *Quinn*-type hearings, to determine business unfitness in numerous regulated industries. *See, e.g.*, 21 U.S.C. § 467 (government may withdraw, indefinitely, inspection services to entities in poultry industry where persons "responsibly connected" to entity are found to have violated food laws), 21 U.S.C. § 671 (same—meat food products industry), 21 U.S.C. § 1047 (same—egg products industry); 7 U.S.C. § 86 (same—grain products industry)

IV. CONCLUSION

Because we find no legal error in the Secretary's conclusion that Congress intended to bar temporarily persons "responsibly connected" to PACA violators from *any* employment with employer-licensees, and because we decide that section 499h(b)'s employment restrictions as applied to petitioner-Siegel survive Due Process and Bill of Attainder challenges, we deny Siegel's petition for review.

DISCIPLINARY DECISIONS

In re: CHINOOK MARKETING CO., INC.

PACA Docket No. 2-7642.

Decision and Order filed June 14, 1988.

Failure to remit proceeds of sale to principal - failure to make full payment promptly.

Edward Silverstein, for Complainant.

Neil C. Buren, Yakima, Washington, for Respondent.

Decision and Order issued by Edward H. McGrail, Administrative Law Judge.

DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*; hereinafter the "PACA"), the regulations promulgated pursuant to the PACA (7 C.F.R. § 46.1 *et seq.*), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. § 1.130 *et seq.*; hereinafter the "Rules of Practice").

The proceeding was instituted by a complaint filed on August 18, 1987, by the Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. It was alleged in the complaint that the Chinook Marketing Co., Inc., (hereinafter "respondent"), violated section 2 of the PACA (7 U.S.C. § 499b) by failing to remit to one principal the net proceeds which it collected as the principal's agent in connection with the sale of 35 lots of apples, a perishable agricultural commodity, in interstate commerce for a total of \$65,257.63. Additionally, it was alleged that respondent failed to make full payment promptly of the agreed purchase prices to eight sellers for 24 lots of mixed fruit, all being perishable agricultural commodities, for a total of \$120,518.43. Respondent filed an answer on September 21, 1987, in which it denied violating the PACA.

An oral hearing was held on April 14, 1988, before the undersigned, in Yakima, Washington. At the hearing, complainant was represented by Thomas C. Heinz, Esq., Office of the General Counsel, U.S. Department of Agriculture. Respondent was represented by Neil C. Buren, Esq., Porter, Buren and Marler, The Park Building, 402 North Fourth Street, Suite 202, Yakima, Washington.

At the commencement of the hearing the parties stipulated that the respondent, while acting as a broker during the period from February 1986, through June 1986, failed to remit to Ste. Royale Fruit Company, net proceeds that respondent collected as an agent for Ste. Royale, totalling \$65,257.63, in connection with the sale, and interstate commerce of thirty-five (35) lots of apples. The parties further stipulated that, during the period January 1986 through April 1986, the respondent failed to make full payment promptly to

eight (8) sellers of produce in the amount of \$120,518.43 for twenty-four (24) lots of mixed fruit which respondent purchased, received and accepted in interstate commerce. (Tr. 5-6)¹ A brief was filed on complainant's behalf by Edward M. Silverstein, Esq., of the same office as Mr. Heinz, on May 20, 1988. Respondent's brief was filed on May 27, 1988. Both briefs have been duly considered.

Pertinent Statutory Provisions

1. Sec. 2(4). (7 U.S.C. § 499b)

It shall be unlawful in or in connection with any transaction in interstate or foreign commerce-

* * * * *

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 5(c);

2. Sec. 8(a). (7 U.S.C. §499h)

(a) Whenever (a) the Secretary determines as provided in section 6 that any commission merchant, dealer, or broker has violated any of the provisions of section 2, or (b) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14(b) of this Act, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

¹References to the hearing transcript are designated "Tr."

1. Sec. 46.2(a) (7 C.F.R. § 46.2(a))

'Full payment promptly' is the term used in the [PACA] in specifying the period of time for making payment without committing a violation of the [PACA]. 'Full payment promptly,' for the purpose of determining violations of the [PACA], means:

* * * * *

(5) Payment for produce purchased by a buyer, within 10 days after the day on which the produce is accepted;

(6) Payment to growers, growers' agents, or shippers by terminal market agents or brokers, who are selling for the account of a grower, growers' agent, or shipper and are authorized to collect from the buyer or receiver, within 5 days after the agent or broker receives payment from the buyer or receiver;

* * * * *

2. Sec. 46.28(b) (7 C.F.R. § 28(b))

*** When the broker is authorized to sell, invoice the buyer, collect and remit to his principal, he shall render an itemized accounting to the principal promptly on receipt of payment, showing the true gross selling price, all brokerage fees deducted, any auction charges and any other expenses incurred in connection with the sale of the shipment. The failure to account truly and correctly and make full payment promptly is a violation of the Act.

3. Sec. 46.33. (7 C.F.R. § 46.33)

Any licensee who collects or receives funds for or on behalf of another person or firm in connection with produce shall not make any use or disposition of such funds in his possession or control that will endanger or impair faithful and prompt payment to the owner or consignor of the produce or any other person having a financial interest herein.

Findings of Fact

1. Respondent is a corporation whose address is P.O. Box 2912, Yakima, Washington 98907.

2. Pursuant to the licensing provisions of the PACA, license number 790417 was issued to respondent on December 1, 1978. This license was renewed annually and is next subject to renewal on or before December 1, 1988. (Complaint, para. 3; Answer, para. III)

3. The advent of controlled atmosphere storage extended the marketing season for apples and pears and enabled growers to market these fruits over a 12 month period. Such storage extended and increased the possibility of the grower obtaining a higher return by not having to sell all of the fruit in a condensed period of time. (Tr. 32, 34, 37)

4. The first storage report for any given harvest season is finalized and issued by the Growers and Shippers Association to all members on November 1 of each year after all harvest is over and all members have reported their storage statistics. The 1984 harvest of apples were being sold throughout 1985. (Tr. 35-37)

5. Respondent commenced selling primarily to grocery stores on the east coast of the United States in 1979. Its sales experienced dramatic steady growth from approximately \$5 million in 1979 to approximately \$12.5 million in the 1985 selling year. This growth was attributed mainly to sales in the export market, i.e., Taiwan, Saudi Arabia and Hong Kong. (Tr. 32)

6. It is accepted that during April 1985, there was a dramatic freeze which damaged the apple crop. Such damage reduced the apple crop by approximately 40% and caused problems for those who depended on a normal crop. In the 1986 selling season this short crop increased prices substantially and caused respondent's export customers to cut back on their purchases, or make no purchases at all during 1986. For the fiscal year ending June 30, 1986, respondent experienced a dramatic reduction in sales, from \$12.5 million to \$3.5 million. (Tr. 34, 39, 41, 54, 66)

7. As more fully detailed in paragraph 5 of the complaint, during the period February through June 1986, respondent, acting as a broker, failed to remit to Ste. Royale Fruit Co., Ltd., net proceeds which the respondent had collected as the agent for Ste. Royale Co., Ltd., totalling \$65,257.63, in connection with the sale in interstate commerce of 35 lots of apples. (Complaint, para. 5; Answer, para. V; Tr. 5)

8. As more fully set forth in paragraph 6 of the complaint, during the period January through April 1986, respondent purchased, received, and accepted 24 lots of mixed fruit, all being perishable agricultural commodities, from eight sellers in interstate commerce, but failed to make full payment promptly of the agreed purchased prices, or balances thereof, in the total amount of \$120,518.43. (Complaint, para. 6; Answer, para. VI; Tr. 5)

9. Full payments of the debts listed in Findings 7 and 8 were made prior to the hearing. (Tr. 5-6)

Discussion and Conclusions

A. Introduction

As noted above, this is a disciplinary proceeding brought pursuant to section 8 of the PACA (7 U.S.C. § 499h). The PACA was enacted to regulate and control the handling of fresh fruits and vegetables. 71 Cong. Rec. S2163 (May 29, 1929). Its passage was occasioned by the severe losses that shippers and growers were suffering due to unfair practices on the part of commission merchants, dealers, and brokers. H.R. Rep. 1041, 71st Cong., 2d Sess. (1930)). Its primary purpose was to provide a practical remedy to small farmers and growers who were vulnerable to the sharp practices of financially irresponsible and unscrupulous brokers in perishable agricultural commodities.² *Chidsey v. Guerin*, 443 F.2d 584 (6th Cir. 1971); *O'Day v. George Arakelian Farms, Inc.*, 536 F.2d 856 (9th Cir. 1976). "Accordingly, certain conduct by commission merchants, dealers, or brokers [was] declared to be unlawful. 7 U.S.C. § 499b," *Id.* at 858. Enforcement is effectuated through a system of licensing with penalties for violation. H. Rep. 1041, 71st Cong., 2d Sess. (1930). See, also, *George Steinberg and Son, Inc. v. Butz*, 491 F.2d 988 (2d Cir.), *cert. den.*, 419 U.S. 830 (1974).

The instant proceeding is such an enforcement action. Its purpose is bifurcated: First, its purpose is to determine whether respondent did violate section 2(a) of the PACA (7 U.S.C. § 499b(a)); and secondly, if it is determined that the respondent did commit such violations, to further determine what sanction should issue as a consequence thereof.

B. Respondent violated the PACA

Section 2(4) of the PACA (7 U.S.C. 499b(4)) makes it unlawful, *inter alia*, for any commission merchant, dealer, or broker³ to fail to "make full payment promptly" of its obligations with regard to transactions involving perishable agricultural commodities made in interstate commerce. Insofar as is pertinent here, "full payment promptly" is defined by the Department (7 C.F.R. §§ 46.2(aa)(5) and (6)) as requiring payment of the agreed purchase prices for produce within 10 days after the day on which the produce is accepted, and payment of the net proceeds due a principal from a broker, who is authorized to collect and remit on its behalf, within five days after the broker receives payment from the buyer or receiver.

Complainant alleged, in paragraphs 5 and 6 of the complaint, that the respondent violated the PACA and the regulations by failing to remit the net

²See generally J. Davidson (ed.) 1 *Agricultural Law*, "The Perishable Agricultural Commodities Act Regulatory Program" (1981).

³These terms are defined at 7 U.S.C. §§ 499a (5), (6) and (7).

proceeds it collected on behalf of one principal in connection with 35 transactions in interstate commerce involving apples, a perishable agricultural commodity, in the total amount of \$65,257.63, and by failing to make full and prompt payment of the agreed purchase prices with respect to 24 transactions involving mixed fruit, all being perishable agricultural commodities, it purchased in interstate commerce, for a total of \$120,518.43. At the hearing, respondent stipulated to the accuracy of the factual allegations in paragraphs 5 and 6 of the complaint. The parties also stipulated that prior to the hearing respondent had made full remittance and full payment of the noted as past due in the complaint. However, this does not materially alter the fact of its violations. See, *Baltimore Tomato Company, Inc.*, 39 Agric. Dec. 412 (1980); and *V.P.C., Inc.*, 41 Agric. Dec. 734 (1982). Respondent's failures to make timely payment, as alleged in the complaint, are clearly in violation of the prohibitions of section 2 of the PACA (7 U.S.C. § 499b). *Atlantic Produce*, 35 Agric. Dec. 1631 (1976), *aff'd mem.*, 568 F.2d 772 (4th Cir.), *cert. den.*, 439 U.S. 819 (1978).

Moreover, the numerous violations committed by respondent constitute flagrant and repeated violations of the PACA. *Reese Sales Company v. Hardin*, 458 F.2d 183 (9th Cir. 1972); *American Fruit Purveyors v. United States*, 630 F.2d 370, 373-374 (5th Cir. 1980); *G. Steinberg & Son, Inc.*, 32 Agric. Dec. 236 (1973), *aff'd sub. nom., George Steinberg and Son, Inc. v. Butz*, *supra*, 491 F.2d 988.⁴ Furthermore, these violations were willful. A violation is willful if, irrespective of evil motive or erroneous advice, a person intentionally does an act prohibited by a statute or if a person carelessly disregards the requirements of a statute. *Henry S. Shatkin*, 34 Agric. Dec. 296 (1975); *G. Steinberg & Son, supra*, 32 Agric. Dec. 236, 263-269; *Goodman v. Benson*, 286 F.2d 896 (7th Cir. 1961).⁵ Respondent should have made sure that it had sufficient capitalization with which to operate. It did not and, consequently, could not pay its suppliers. Under these circumstances, respondent was clearly operated in careless disregard of the payment requirements of the PACA, and respondent's violations were, therefore, willful. *Atlantic Produce, supra*, 35 Agric. Dec. 1631, 1961; *Rudolph John Kafcsak*, 39 Agric. Dec. 683 (1980), *aff'd mem.*, 673 F.2d 1329 (6th Cir. 1981).

An additional reason why respondent's violations must be deemed willful relates to its failure to remit monies it collected on behalf of Ste. Royale Co., Ltd., to its principal. Respondent was a fiduciary as to those funds, and it violated the duty it owed to Ste. Royale Co., Ltd., when it converted those funds to its own use. Any violation of duties owed by a fiduciary to its

⁴Also see *Harry Klein produce v. U.S. Dept. of Agriculture*, 831 F.2d 403 (2d Cir. 1987); and *Kaplan's Fruit & Produce Company, Inc.*, 44 Agric. Dec. 333 (1985).

⁵Also see *Farm Market Service, Inc. a/t/a FMS*, 44 Agric. Dec. 316, 321-1 (1984).

principal is a particularly serious violation of the Act which must be deemed to be willful. See e.g. *Mandell, Spector, Rudolph Co.*, 24 Agric. Dec. 651, 695, 701 (1965), *aff'd*, 364 F.2d 889 (3d Cir. 1966), *cert. den.*, 385 U.S. 1008 (1967); *Sol Salins*, 37 Agric. Dec. 1699, 1733-4 (1978).

C. Sanction

The complaint in this matter, filed August 18, 1987, originally sought revocation of respondent's license. At the hearing, the complainant's witness testified that it was seeking a suspension of respondent's license for 90 days as the proper sanction for its violations. Support for the issuance of this sanction is found in the testimony of Ms. Jane E. Servais, Market Specialist, Fruit and Vegetable Division, Marketing and Inspection Services, USDA. The decisive factors which entered into complainant's consideration for this recommendation include: the number of violations; the amount involved; the seriousness of violations; the impact of violations on the industry as a whole; the length of time it took for payment to be made; the deterrent affect it may have on the alleged violator and future violators; the management decision made by respondent; and the financial status of respondent. (Tr. 14-16; 18-19) However, subsequent to the hearing, after a review of the testimony of the record, complainant recommended that respondent's license should be suspended for 75 days.

Prior to January 1986, respondent had no financial problems. In fact, respondent's bank had supported it by renewing its operating credit line prior to the beginning of the harvest. As noted, Finding No. 6, the dramatic freeze in April 1985 reduced the apple crop to be sold in 1986 by approximately 70%. However, the seriousness of the deterioration of respondent's business was not realized until January 1986. Prices increased substantially, thereby causing respondent's export customers to drastically reduce purchases, or to completely curtail them. This was evidenced by the equally dramatic drop in respondent's sales from \$12.5 million in the fiscal year ending June 30, 1985, to \$3.5 million for the fiscal year ending June 30, 1986.

Following the final determination of the short crop of 1985 apples and the affects it was having on its sales, respondent suspended its operations as an agent/broker, drastically retrenched by reducing overhead, and immediately undertook efforts to satisfy debts it owed to customers. Although respondent's last debt was not fully paid until April 1988, as early as the spring of 1986, respondent contacted each and every warehouse to whom it had owed money, explained his financial problems and assured them of eventual payment in full. (Tr. 74-75) Rather than electing to file for bankruptcy, respondent sought financial advice on ways to satisfy debts owed to its customers. In this process the bank foreclosed on his house and personal assets.

Since early 1986, respondent has operated as a field service broker advising customers of current market prices, making purchases, and arranging for transportation. It bills for a brokerage fee only and does not take title to any

The Declaration of James Frazier is fruit handled. In such capacity, respondent grossed \$300,000 to \$350,000 in the past year which has enabled it to fully pay the creditors cited in the complaint. In fact, it continues to service many of these former creditors. As noted, this debt amounted to a combined total of \$185,776.06.

It is a well established policy that a "no pay" case may be converted to a "slow pay" case which warrants a suspension order rather than a revocation order provided: (1) there has been full payment of debts prior to a hearing, and, (2) respondent is in present compliance with the payment provisions of the Act and the regulations. *In re Gilardi Truck and Transportation, Inc.*, 43 Agric. Dec. 116, 149 (1984); *In re Carpenito Bros., Inc.*, 46 Agric. Dec. ____ (March, 1987). Here, respondent has met these criteria. Thus, this matter is considered a "slow pay" case.

Although all excuses as to why payment was not made are disregarded as mitigating circumstances when considering the violations, mitigating circumstances are always considered in determining sanctions in the Department's disciplinary cases. *In re Esposito*, 38 Agric. Dec. 613, 633, 639 (1979).

In viewing the mitigating circumstances here, it is revealed that respondent's financial difficulties arose out of the short apple crop of 1985, which was to be sold in 1986. Prior to January 1986, respondent had been adequately capitalized. The violations cited in the complaint commenced in mid-January 1986 and continued through May 1986. The series of events set forth above clearly outline the immediate actions taken by respondent upon realizing its financial straightgts. It ceased operations, rejected the easy avenue of bankruptcy, contacted each warehouse to whom it owed money and fully paid off its debts, albeit late. It appears that such mitigating circumstances influenced complainant in seeking suspension rather than revocation and later requesting a shorter suspension period than originally recommended. The same mitigating circumstances have also influenced the undersigned into reducing the period of suspension to 45 days which will be an effective deterrent not only to respondent but also to other potential violators.

Order

Respondent's license is suspended for 45 days.

This Order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[This decision and order became final July 26, 1988.--Editor.]

In re: IMPERIAL BRANDS, INC., and CHARLES E. JOYNER.
PACA Docket No. 2-7575.
Decision and Order filed May 27, 1988.

Failure to make full payment promptly - decision on the pleadings.

Allan Kahan, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edward H. McGrath, Administrative Law Judge

DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) hereinafter referred to as the "Act", instituted by a complaint filed on July 7, 1987, by the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. It is alleged in the complaint that during the period June through August 1985, respondents, acting as agents for Horace T. Holmes and Sons, Trenton, South Carolina, in interstate and foreign commerce, sold for their principal 21 lots of fruits, being perishable agricultural commodities, but failed to make full payment promptly of the net proceeds realized, or the balance thereof, in the total amount of \$280,000.00.

A copy of the complaint was served upon respondents. Respondent filed an Answer denying the allegations. On December 30, 1987, attorney for complainant requested a date be assigned for the oral hearing, and a date was set. Thereafter, complainant subsequently moved for a decision on the pleadings. Based on the admissions by respondents in the bankruptcy petition of respondent Imperial Brands, Inc., as well as other admissions of respondents contained in the Declaration of James Frazier, this motion was granted and issued on May 23, 1988.

Included herein as an appendix with the pertinent documents obtained attached thereto as Exhibits 1, 2 and 3.

The following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent, Imperial Brands, Inc., is a corporation, whose address is P. O. Drawer 312, Lake Wales, Florida 33853.
2. Respondent, Charles E. Joyner, is an individual whose address is 1176 South Lake Shore Boulevard, Lake Wales, Florida 33853.
3. Respondent Charles Joyner is, and was at all times material herein, the sole officer, director and stockowner of respondent Imperial Brands, Inc., and was responsible for the management, direction and control of respondent Imperial Brands, Inc.

4. Pursuant to the licensing provisions of the Act, license number 810836 was issued to respondent Imperial Brands, Inc., on April 6, 1981. This license was renewed annually, but terminated on April 6, 1986, pursuant to section 4(a) of the Act (7 U.S.C. 499d(a)) when respondent failed to pay the required annual license fee.

5. As more fully set forth in paragraph 7 of the complaint, during the period June through August 1985, respondents, acting as growers agents, sold on behalf of Horace T. Holmes and Sons, Trenton, South Carolina, 21 lots of fruits, being perishable agricultural commodities, but failed to make full payment promptly of the net proceeds realized, or the balance thereof in the total amount of \$280,000.00.

Conclusions

Respondents' failure to make full payment promptly with respect to the 21 transactions set forth in Finding of Fact No. 5, above, constitutes willful, repeated and flagrant violations of section 2 of the Act (7 U.S.C. § 499b), for which the Order below is issued.

Order

A finding is made that respondents have committed willful, flagrant and repeated violations of section 2 of the Act (7 U.S.C. § 499b), and the facts and circumstances set forth above, shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice Governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceedings within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon the parties.

[This decision and order as to Charles E. Joyner became final July 21, 1988.--Editor.]

APPENDIX

UNITED STATES DEPARTMENT OF AGRICULTURE BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. 2-7575
Imperial Brands, Inc.,)
and Charles E. Joyner,)
Respondents)

Declaration of James R. Frazier

I, James R. Frazier, make the following declaration:

1. I am a Supervisory Marketing Specialist employed by the PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D. C. 20250. I have served as Head of the Trade Practices Section of the PACA Branch since its creation in January 1985. My duties include overseeing the investigations of alleged violations of the Perishable Agricultural Commodities Act (7 U.S.C. 499a et seq.).

2. I make this affidavit in support of the complainant's Motion for a Decision herewith.

3. As a result of reparation complaints filed against Imperial Brands, Inc., an investigation of the firm's activities was directed to be conducted to determine the extent of its then current indebtedness for produce. This investigation was conducted during the period March 4 through March 12, 1985.

4. On March 4, 1985, Charles E. Joyner, president of Imperial Brands, Inc., informed the Department that their records had been destroyed on January 16, 1985, in a fire.

5. On February 10, 1986, H. T. Holmes and Sons of Trenton, South Carolina, filed a reparation proceeding against the same

entity named in the above captioned matter. Included with the complaint were documents relating to the transactions, such as loading manifests, price sheet, and other papers setting forth respondents failure to pay \$280,000 for H. T. Holmes and Sons, Inc., 1985 peach crop.

The details of the transactions are more specifically stated in paragraph 7 of the Complaint filed herein, which by this reference is incorporated in this document. Copies of the loading manifests and other documents relating to each of the transactions submitted by H. T. Holmes and Sons, are set forth herein as Exhibit 1. A copy of the letter dated February 6, 1986, from respondents, Charles E. Joyner and Imperial Brands, Inc., admitting to the \$281,000.00 debt in connection with the 1985 peach crop, a perishable agricultural commodity, which was part of the investigative file for the reparation proceeding, is attached hereto as Exhibit 2.

6. The bankruptcy petition filed by respondent, Imperial Brands, Inc., on July 9, 1986, admits to a debt of \$276,591.81 with H. T. Holmes and Sons, Inc., and is attached hereto as Exhibit 3.

8. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct: Executed and declare on April 6th, 1988, in Washington, D. C.



James R. Frazier, Head
Trade Practices Section
P.A.C.A. Branch
Fruit and Vegetable Division

- tam # (2))

Pump records
P. m. Charles J. Jorgensen
Oct 14, 1985

Pool #	Date	Count	Size	↑	
38	20/fun/85	412	2 1/4"	5.00	3296.00
45	20/fun/85	70	1 3/8" + up	1.50	315.00
		436	2	6.00	2616.00
		230 PP	230 (48 ct.)	7.00	1610.00
47	21/fun/85	701	2 1/4" + up	10.00	7010.00
		166 PP	143 (48 ct) 23 (42 ct)	8.00	1610.00
59	26/fun/85	772	2 1/4" + up	2.00	5404.00
63	27/fun/85	551	2" - 2 1/4"	6.00	3306.00
		25 PP	25 (48 ct)	8.00	200.00
68	28/fun/85	81 PP	81 (42 ct)	7.50	607.50
		48 PP	48 (48 ct)	8.00	384.00
		5 PP	5 (42 ct)		11.25
		10 PP	10 (42 ct)		11.25
76	02/fun/85	150 PP	150 (48 ct)	8.00	1200.00
77	03/fun/85	364	2 1/4" - 2 1/2"	8.00	2912.00
		5 PP	5 (36 ct)	8.00	40.00
82	05/fun/85	995	2 1/4" - 2 1/2"	8.00	7960.00
		50	2 1/4" - 2 1/2"	8.00	400.00
		5 PP	5 (42 ct)		11.25
84	05/fun/85	160 PP	160 (48 ct)	8.00	1280.00
		1202	2 1/4" - 2 1/2"	8.00	9616.00
		100 PP	100 (48 ct)	8.00	800.00
103	10/fun/85	846	2 1/4" - 2 1/2"	8.00	6768.00
		6 bound	20 00		1 1/2
105	10/fun/85	610	2 1/4" - 2 1/2"	8.00	4880.00
		800 PP	800 (48 ct)	7.00	5600.00

EXHIBIT 2

Total 111,150

2 of 4

Load #	Date	Count	Size	
106 -	10/ful/85	618 800 PP	800 (41 ct) 8.00	4944.00
107 ✓	11/ful/85	800 PP	800 (36.64 ct) 8.00	6400.00
108 ✓	11/ful/85	448	2 1/4 - 2 1/2 4.00	3584.00
109	12/ful/85	332	2" - 2 1/4" 6.00	1992.00
		390	2 1/4 - 2 1/2 8.00	3120.00
		155 PP	155 (48 ct) 8.00	1240.00
		10 PP	10 (48 ct)	112
110 -	15/ful/85	336	2 1/4 - 2 1/2 10.00	3360.00
111 -	15/ful/85	45	2 1/4 - 2 1/2 8.00	360.00
		1000	2 1/4 - 2 1/2 1.00	9000.00
		15 PP	15 (42 ct) 8.00	120.00
112 ✓	15/ful/85	421 421	2 1/4 - 2 1/2 9.00	3789.00
		50 PP	50 (42 ct) 8.00	400.00
113 ✓	15/ful/85	277	2 - 2 1/4 1.00	1939.00
114 ✓	15/ful/85	162 PP	162 (42 ct) 8.00	1296.00
118 ✓	18/ful/85	472	2 1/4 - 2 1/2 10.00	4720.00
120 ✓	18/ful/85	228 PP	228 (48 ct) 8.00	1824.00
123 ✓	19/ful/85	729	2 1/4 - 2 1/2 10.00	7290.00
124A	19/ful/85	418 PP	418 (48 ct) 8.00	3344.00
124B	19/ful/85	110	110 2 1/4 - 2 1/2 10.00	1100.00
125A	22/ful/85	1000	2 1/4 - 2 1/2 12.00	12,000.00
125B		52	2 1/4 - 2 1/2 12.00	624.00
126 ✓	22/ful/85	150 PP	150 (48 ct) 8.00	1200.00
127 ✓	22/ful/85	982	2 1/4 - 2 1/2 10.00	9820.00
		200 PP	200 (48 - 42 ct) 8.00	1600.00
128 ✓	22/ful/85	767	2 1/4 - 2 1/2 12.00	9204.00
		EX-11-1 i 2		

3064				
Load	Date	Count	Size	
129 ✓	22/ful/85	792	2 1/4 - 2 1/2 ^{10.00}	7920.00
		160 PP	160 (480 42 ct) ^{8.00}	1280.00
130 ✓	22/ful/85	1003	2 1/4 - 2 1/2 ^{10.60}	10030.00
131 ✓	23/ful/85	1000 988	2 - 2 1/4 ^{8.00}	7904.00
132 ✓	23/ful/85	300 PP	300 (48 42 ct) ^{8.00}	2400.00
133 ✓	23/ful/85	150 PP	150 (48 ct) ^{8.00}	1200.00
134 A ✓	23/ful/85	956	2 1/4 - 2 1/2 ^{12.00}	6672.00
134 B ✓		100	#2 ^{6.50}	650.00
135 ✓	23/ful/85	360	2 1/4 - 2 1/2 ^{11.00}	3960.00
137 ✓	23/ful/85	265 PP	265 (48 ct) ^{8.00}	2120.00
138 ✓	25/ful/85	718	2 1/4 - 2 1/2 ^{9.00}	6462.00
		257	2 - 2 1/4 ^{7.00}	1799.00
		200 160 PP	160 (42 ct) ^{8.00}	1280.00
		40 PP	40 (48 ct) ^{8.00}	320.00
139 ✓	25/ful/85	899	2 1/4 - 2 1/2 ^{9.00}	8091.00
139	25/ful/85	200 PP	200 (48 ct) ^{8.00}	1600.00
140 ✓	25/ful/85	108	2 1/4 - 2 1/2 ^{12.00}	1296.00
141 ✓	25/ful/85	547	2 1/4 - 2 1/2 ^{12.00}	6564.00
142 ✓	25/ful/85	300 PP	300 300 (48 ct) ^{9.00}	3600.00
143 ✓	26/ful/85	1045	2 1/4 - 2 1/2 ^{12.60}	12550.00
144 ✓	26/ful/85	150	#2 ^{6.50}	975.00
144 ✓	26/ful/85	965	2 1/4 - 2 1/2 ^{12.00}	11580.00
145 ✓	26/ful/85	941 PP	941 (48 ct) ^{5.86}	5514.21
146 ✓	29/ful/85	800	2 1/4 - 2 1/2 ^{10.00}	8000.00
147 ✓	24/ful/85	1080	2 1/4 - 2 1/2 ^{11.00}	11880.00
148 A ✓	24/ful/85	601	2 1/4 - 2 1/2 ^{10.00}	6010.00
148 B		400	2 1/4 - 2 1/2 ^{10.00}	4000.00
		i		135147

Trade	Date	Count	Size	
149 ✓	29/ful/85	600 ¹⁰⁸	2 1/4 - 2 1/2 ^{10.00}	1080.00
150	29/ful/85	300 PP	300 (4 ft) ^{8.00}	2400.00
151	30/ful/85	137	2 1/4 - 2 1/2 ^{7.00}	954.00
152	30/ful/85	515 PP	515 (4 ft) ^{8.00}	4120.00
152	30/ful/85	483	2 1/4 - 2 1/2 ^{10.00}	4830.00
153	02/Aug/85	193	2 1/4 - 2 1/2 ^{11.00}	2123.00
155	02/Aug/85	640	2 1/4 - 2 1/2 ^{10.00}	6400.00
156	02/Aug/85	896	2 1/2 & up ^{10.00}	8960.00
157	02/Aug/85	62 PP	62 (4 ft) ^{8.00}	496.00
			Total of pgs. 4	31,368.00
	Size = 1	67,814.50		
	2	93,243.00		
	3	135,647.26		
	4	31,368.00		
	Total	\$328,072.76		
	Less Brokerage	<u>12,835.20</u>		
	NET	315,237.56		
			28,688 3/4 bushels	
			7,984 bushels	
			36,672 @ .35	
			\$12,835.20	

Sold To _____
 Address _____
 City & State _____
 Ship To _____
 Address _____
 City & State _____
 To Arrive _____
 Buyer's P O No _____

Date 6-21-85
 Sold For H T HOLMES
 Grower Load No. NTH #45
 Trucker _____
 License TRH 99093 VA
 Our File Number _____
 Broker _____
 Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Freight	Delivered Price	Total
33	3/4 RV	1 1/8' + VF	RED HAVEN					
549	3/4 RV	2" + VP	RED HAVEN					
18	PANTA							
360	PANTA	MISLY 48 CT	CORONET					
	PANTA							
		FILL S	OUT	LOAD	STARTED	6-20-85		
33		1 1/8	ALL WISE					
113		2"	WISE					
436		2"	HOLMES					
130	PANTA	WISE						
230	PANTA	HOLMES						

Special Instructions _____

Time of Departure: _____ Driver's Signature X Robert W. WingfieldShipper's Representative Ray H. Hargrove

Receiver's Signature _____ Time _____ Temp. _____

Comments _____

IMPERIAL BRANDS, INC., and CHARLES E JOYNER

Telephone 813/676-9475

IMPERIAL BRANDS, INC.

210 Hwy 60 West
Lake Wales, FL 33853

P O Drawer 312

Sold To _____ Date 6-21-85
Address _____ Sold For J. THOMPSON
City & State _____ Grower Load No. HTN # 47
Ship To _____ Trucker J. THOMPSON
Address _____ License V-13799 TENN.
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P O No _____ Address _____

Packages	Container	Size	Variety	Grade	F.O.B Price	Freight	Delivered Price	Total
1013	3/4 RV	2 1/4" VUP	RED HAVEN	VS #1		201	2 1/4 HOLMES	
						322	2 1/4 WISE	
23	PANTA	42 CT	COLONET	FANCY		166	PANTA HTN	
127	PANTA	48 CT	EMERALD	FANCY				
10	3/4 RV	2 1/4"	HTN	JOHN THOMPSON				
10	PANTA	48 CT	HTN	JOHN THOMPSON				
4	PANTA	42+48	HTN	MR. JERNIGEN				
2	PANTA	48 CT	HTN	MR. SOUTHWICK				

Special Instructions _____

Time of Departure: _____ Driver's Signature X H. P. Stone

Shipper's Representative Shy H. Stone

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P O No _____

Date 6-26-85
Sold For H.T. Holmes
Grower Load No HTH # 59
Trucker Bewitt
License VII804 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: MAINTAIN 38°

Time of Departure: _____ Driver's Signature X _____

Shipper's Representative Greg Handline

Receiver's Signature: _____ Time 11:11 Temp. 11:11

Comments _____

~~EXHIBIT 1~~

IMPERIAL BRANDS, INC., and CHARLES E JOYNER

Telephone 813/676-9475

IMPERIAL BRANDS, INC.

210 Hwy 60 West
Lake Wales, FL 33853

P.O. Drawer 312

Sold To THE PUBLIC PO #W-3
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 6-27-85
Sold For H.T. HOLMES
Grower Load No. H.T.H. #63
Trucker CRUKET
License P73896 FLA
Our File Number _____
Broker _____
Address _____

Packages	Container	Size	Variety	Grade	F.O.B. Price	Freight	Delivered Price	Total
1045	3/4 BU	2"-2 1/4"	RED WAX	U.S. #1 EXTRA				
		2"	551	HOLMES				
			494	W1 SET				
5	PANTA	SAMPLES	FOR	JOHN SORIO				
	HOLMES			FRANK DENIE				

Special Instructions. 380

Time of Departure: _____ Driver's Signature Henry J. Howell

Shipper's Representative Greg Hunsing

Receiver's Signature: _____ Time _____ Temp. _____

Comments. _____

EXHIBIT 1 10

CP 231 0 0 03

Telephone 813/676-9475

IMPERIAL BRANDS, INC.

210 Hwy 60 West
Lake Wales, FL 33853

P O Drawer 312

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 6-27-85
Sold For RT HOMES
Grower Load No H.T.N. #63
Trucker _____
License P 73896 PLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions:

38°

Time of Departure:

Driver's Signature

Shipper's Representative

Receiver's Signature: _____

Time

Temp.

Comments:

~~EXHIBIT I~~

CPM 23076 4-88

Telephone 813/676-9475

210 Hwy 60 West
Lake Wales, FL 33853

P O Drawer 312

Sold To MR & MRS. GRANT
Address LOT 14-9
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 6-28-85
Sold For H.T. HOLMES
Grower Load No. N.T.H. #68
Trucker J+J
License V44807 FCA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: _____

Time of Departure: _____ Dryer's Signature Carl F. H. H. H.

Shipper's Representative Greg Henderson

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

12

P O Drawer 312

127

Date 6-28-85
Sold For HT HOMES
Grower Load No. HT #68
Trucker J+J
License Y44801 FLA
Our File Number _____
Broker _____
Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Freight	Delivered Price	Total
48	PANTA	48 CT	RED GRAB	FANCY				
5	PANTA	42 CT	RED GRAB	FANCY				
10	PANTA	42+36	ATTN: L. MENA					
		ALL	HOI ME	3				

Comments: _____

~~EXHIBIT~~ ~~4~~ ~~13~~

CD: 3 2074 4 43

Telephone 813/676-9475

210 Hwy 60 West
Lake Wales, FL 33853

P.O. Drawer 312

Sold To B. WEINER
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P O No _____

Date 7-2-85
Sold For H. T. HORMES
Grower Load No HTH # 76
Trucker WILSON
License 510329 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: _____

Time of Departure: _____ Driver's Signature *Mark Hutton*

Shipper's Representative Greg Van Dyke

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

~~EXHIBIT 1-14~~

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P. O. No. _____

Date 7-3-85
Sold For AT HOLMES
Grower Load No. HTH # 77
Trucker JAJ
License W68 J03 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special instructions. MAINTAIN 38°

Time of Departure: _____ Driver's Signature B. L. Carlson

Shipper's Representative Greg H. [Signature]

Receiver's Signature, _____ Time _____ Temp. _____

Comments: _____

P.O. Drawer 312

Date 7-3-85
 Sold For _____
 Grower Load No. ~~666~~ 27
 Trucker _____
 License _____
 Our File Number _____
 Broker _____
 Address _____

[illegible]

Comments: _____

Telephone 813/676-9475

210 Hwy 60 West
Lake Wales, FL 33853

P O Drawer 312

Date 7-5-85
Sold For U T. HOLMES
Grower Load No. UTW #82
Trucker DOWNS
License A-77702 FLA
Our File Number _____
Broker _____
Address _____

Packages	Container	Size	Variety	Grade	F.O.B. Price	Freight	Delivered Price	Total
50	3/4 RU	2 1/4 - 1 1/2"	WINDBLOW	U.S. #1 EXTRA				
5	PANTA	42 CT.	WINDBLOW	ATTN	RDBT.	FIELD		
	ALL	Here	MISS					

Special instructions: _____

Time of Departure: _____ Driver's Signature [Signature]

Shipper's Representative Greg Anderson

Receiver's Signature. _____ Time _____ Temp. _____

Comments: _____

~~EXHIBIT~~ 1-18

210 Hwy 60 West
Lake Wales, FL 33853

Sold To W R VERNON
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 2-5-85
Sold For H.T. HOLMES
Grower Load No H.T.H. # 84
Trucker Thompson
License TEX 60500
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions:

Time of Departure:

Driver's Signature

Shipper's Representative

Receiver's Signature:

Time.

Temp.

Comments:

EXHIBIT 1 19

210 Hwy 60 West
Lake Wales, FL 33853

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P O No _____

Date 7-10-85
Sold For H.T. Holmes
Grower Load No. HTL #103
Trucker BUTZ
License 14R 784 TEX
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: _____

Time of Departure. Driver's Signature X *[Signature]*

Shipper's Representative Greg Campbell

Receiver's Signature: _____ Time _____ Temp. _____

Comments. _____

~~EXHIBIT 1~~ 21

Telephone 813/676-9475

210 Hwy 60 West
Lake Wales, FL 33853

P O Drawer 312

Sold To _____ Date 7-10-85
Address _____ Sold For N.T. Holmes
City & State _____ Grower Load No N.T. # 105
Ship To _____ Trucker HIGHLANDER
Address _____ License ED 1096 FLA
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

Packages	Container	Size	Variety	Grade	F.O.B Price	Freight	Delivered Price	Total
610	7F BU	2'4"x2 1/2"	RED GLOBE	U.S #1 EXTRA				
800	PANTA	48x12x10	RED GLOBE	FANCY				
	14 PALLETS	TO BE	RETURNED TO	N.Y.	HOMES			
	All tires	CS						

Special Instructions: MATH 380

Time of Departure. _____ Driver's Signature *L. David Williams*

Shipper's Representative Joe Handberg

Receiver's Signature: _____ Time _____ Temp. _____

Comments:

EXHIBIT 22

Sold To _____ Date 7-10-85
 Address _____ Sold For H.T. HOLMES
 City & State _____ Grower Load No. H.T.H. #106
 Ship To _____ Trucker HIGHLANDER
 Address _____ License 18443 S.C.
 City & State _____ Our File Number _____
 To Arrive _____ Broker _____
 Buyer's P.O. No _____ Address _____

Packages	Container	Size	Variety	Grade	F O B Price	Freight	Delivered Price	Total
800	PANDA	48 LAMP	REDWAVE	FANCY				
520	34 BV	2 1/4" x 2 1/2"	REDWAVE	U.S. #1 EXTRA				
12 PALLETS TO BE RETURNED TO HT HOLMES								
2 1/4"	44	WISE						
1 1/2"	152	WISE						
6-18		HOLMES						

Special Instructions MAINTAIN 38°Time of Departure: _____ Driver's Signature [Signature]Shipper's Representative [Signature]

Receiver's Signature _____ Time _____ Temp. _____

Comments _____

SHIP 1 29

Telephone 813/676-9475

210 Hwy 60 West
Lake Wales, FL 33853

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 7-11-85
Sold For N. T. HOLMES
Grower Load No. N.T.H # 107
Trucker WILLIAM DEZ
License RB 0804 MKK
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: MANITAN 30°

Time of Departure: 11:11 Driver's Signature [Signature]

Shipper's Representative Greg [Signature]

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

24

Sold To _____ Date 7-11-85
 Address _____ Sold For H.T. HOLMES
 City & State _____ Grower Load No. H.T.H. #108
 Ship To _____ Trucker THOMPSON
 Address _____ License 60462 TENN.
 City & State _____ Our File Number _____
 To Arrive _____ Broker _____
 Buyer's P.O. No. _____ Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Freight	Delivered Price	Total
544	3/4 SW	2 1/2" x 2 1/2"	RED GLOBE	U.S. #1				
544	3/4 SW	2 1/2" x 2 1/2"	RED GLOBE	U.S. #1				
650	3/4 SW	2 1/2" x 2 1/2"	RED GLOBE	U.S. #1 EXTRA				
13 PALLETS TO BE RETURNED TO H.T. HOLMES & SONS								
202	W/SE							
448	HOLMES							

Special Instructions: 38°Time of Departure: _____ Driver's Signature: J. G. MasonShipper's Representative: Ray H. Haskins

Receiver's Signature: _____ Time: _____ Temp.: _____

Comments: _____

EXHIBIT i

IMPERIAL BRANDS, INC, and CHARLES E JOYNER

Telephone 813/676-3960

IMPERIAL BRANDS, INC
One Scenic Central Bldg
Suite 100
Lake Wales, FL 33853

P. O. Drawer 312

Sold To _____ Date 7-12
Address _____ Sold For H. T. HOLMES
City & State _____ Grower Load No H. T. H. #109
Ship To _____ Trucker JOY
Address _____ License 79-714 VA
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No _____ Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Freight	Delivered Price	Total
432	3/4 BL	2"-2 1/4"	REGGARE	U.S. #1 EXTRA				
410	3/4 BL	2 1/4"-2 1/2"	REGGARE	U.S. #1 EXTRA				
170	PANTH	1 1/4" HUCKER	REGGARE	FANCY				
	2"	40-50		100 WISE				
		42-50		332 HOLMES				
	2 1/4"	20	WISE					
		390	HOLMES					
	PANTH	15"	WISE					
		155	HOLMES					

Special Instructions: _____

Time of Departure: _____ Driver's Signature JOYNER

Shipper's Representative JOYNER

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

EXHIBIT 1 26

P O Drawer 31

Date 7-17
Sold For H I HERRICK
Grower Load No _____ # 78
Trucker CAL
License _____
Our File Number _____
Broker _____
Address _____

[illegible]

Comments _____

~~EXHIBIT~~ ~~1~~ ~~2~~

P.O. Drawer 312

Date 7-15-85
Sold For HT HOMES
Grower Load No. #77 #11
Trucker Downs
License A 77702 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Comments _____

~~EXHIBIT 1~~

IMPERIAL BRANDS, INC., and CHARLES E JOYNER

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To _____ Date 7-15-85
Address _____ Sold For H.T. HOLMES
City & State _____ Grower Load No HTL #111
Ship To _____ Trucker JOHNS
Address _____ License A 71201 FLA
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Freight	Delivered Price	Total
1000	3/4 BU	2 1/4"-2 1/2"	BLAKE	U.S. #1 EXTRA				
10	PANTA	42x56	BLAKE	SAMPLE: BUYING OFFICE				
3	PANTA	42x56	SAMPLE: HAZARD F BYRD					
1	PANTA	42	SAMPLE: GIANT RECEIVER					
1	3/4 BU	2 1/4"-2 1/2"	SAMPLE: GIANT RECEIVER					
ALL HOLMES								

Special Instructions: _____

Time of Departure: _____ Driver's Signature [Signature]

Shipper's Representative [Signature]

Receiver's Signature: _____ Time _____ Temp _____

Comments: _____

EXHIBIT 1 3

P O, Drawer 312

Date 7-15-85
Sold For 17TH
Grower Load No. 17TH #113
Trucker GILLIAN O
License _____
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: 38°

Time of Departure: _____ Driver's Signature Louis Grier

Shipper's Representative Greg Hudgins

Receiver's Signature: _____ Time: _____ Temp: _____

Comments: _____

EXHIBIT : 32

P O Drawer 312

Sold To _____ Date 7-15-85
Address _____ Sold For N.T. NORMES
City & State _____ Grower Load No. N.T. IN #114
Ship To _____ Trucker WILSON
Address _____ License S 10329 FLA
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

[illegible]

Special Instructions: _____

Time of Departure: 11/1 Driver's Signature [Signature]

Shipper's Representative Greg Smith

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

EXHIBIT 1

P.O. Drawer 312

Sold To _____ Date 7-18-85
Address _____ Sold For H.T. NORMAN
City & State _____ Grower Load No. H.T.N. # 120
Ship To _____ Trucker _____
Address _____ License TEX 823 217
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

[illegible]

Special Instructions: _____

Time of Departure: _____ Driver's Signature: [Signature]

Shipper's Representative Thy. Kestner

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

EXHIBIT 1 35

Telephone 813/676-9475

P O Drawer 3

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 7-19-85
Sold For H.T. HOLMES
Grower Load No. HTW 1248
Trucker _____
License LO9554 FL
Our File Number _____
Broker _____
Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Frelght	Delivered Price	Total
561	3/4 B.V.	2 1/4" - 2 1/2"	BRACE	U.S. #1 EXTRA				
	2 1/4"	451	U.S. #1					
		110	U.S. #1					
		(TRUCK 110, 110)	U.S. #1					

Special Instructions: MANTAIN 38°

Time of Departure. Driver's Signature X *[Signature]*

Shipper's Representative Ray [Signature]

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

EXHIBIT

Sold To GRANT
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 7-22-85
Sold For NT Homes
Grower Load No. NDN #125
Trucker DOWNS
License A77202 FLT
Our File Number _____
Broker _____
Address _____

[illegible]

Special instructions: MOUNTAIN 38°

Time of Departure: 11:00 AM Driver's Signature [Signature]

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

P O Drawer 312

Date 7-22-85
Sold For H.T. HOLMES
Grower Load No. H.T.W. #128
Trucker THOMPSON
License 60462 TENN
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions. 390

Shipper's Representative Greg Wacker

Receiver's Signature _____ Time _____ Temp. _____

Comments _____

СХИ: 1 43

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P. O. No. _____

Date 7-22-85
Sold For N.T. Holmes
Grower Load No. NIX #1310
Trucker NIGHT ANGEL
License U94604 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: MAINTAIN 38°

Time of Departure, 11:11 / Driver's Signature Dave Solbman

Shipper's Representative John J. [Signature]

Receiver's Signature _____ Time _____ Temp _____

Comments: _____

EXHIBIT 1 45

IMPERIAL BRANDS, INC., and CHARLES E. JOYNER

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To _____ Date 7-23-85
Address _____ Sold For H. T. HOLMES
City & State _____ Grower Load No. H.T.H. #131a
Ship To _____ Trucker HIGHLANDER
Address _____ License T 18643 S-C.
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

Packages	Container	Size	Variety	Grade	F O B Price	Freight	Delivered Price	Total
162	3/4 RV	2"-2 1/4"	BLAKE	U.S. #1 EXTRA				
	FILLS	OUT	LOAD	131A TO A				
	TOTAL	DF	1010	BOXES				
	TOTAL	COUNT	988	HOLMES				
			22	WISER				

Special Instructions. MAINTAIN 38°

Time of Departure _____ Driver's Signature [Signature]

Shipper's Representative [Signature]

Receiver's Signature _____ Time _____ Temp _____

Comments _____

EXHIBIT: 1 46

Sold To _____ Date 7-22
 Address _____ Sold For H.T. HOLMES
 City & State _____ Grower Load No. H71 #131A
 Ship To _____ Trucker HIGHLANDER
 Address _____ License E 18643 S.C.
 City & State _____ Our File Number _____
 To Arrive _____ Broker _____
 Buyer's P.O. No. _____ Address _____

Packages	Container	Size	Variety	Grade	FOB Price	Freight	Delivered Price	Total
848	3/4 GN	2"-2 1/4"	BLAKE	U.S. #1 EXTRA				
	ALL HOLMES							

 Special Instructions. RETURN TO H.T. HOLMES 12 30 PM 7-23-82

 Time of Departure: _____ Driver's Signature [Signature]

 Shipper's Representative [Signature]

Receiver's Signature _____ Time _____ Temp. _____

 Comments: SALE BOXES MIS-STAMPED 1 7/8"

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To RAY WETLAND
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 7-23-85
Sold For H.T. HOLMES
Grower Load No. H.T.H. #138
Trucker _____
License WJ 303
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: Maintain 39°

Time of Departure:

Driver's Signature

Shipper's Representative

Receiver's Signature: _____

Time

Temp.

Comments

EXHIBIT 49

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To MARSHVICH OF ORLANDO
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 7-23-85
Sold For H.T. HOLMES
Grower Load No H.T.N. #1348
Trucker HIGALLADEZ
License 568504 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: MAINTAIN 38°

Time of Departure: 11:00 AM Driver's Signature: [Signature]

Shipper's Representative Guy Smith, Jr.

Receiver's Signature _____ Time _____ Temp _____

Comments _____

EXHIBIT 1 51

Telephone 813/676-9475

P.O. Drawer 312

Sold To _____ Date 7-23-85
Address _____ Sold For H.T. NAMES
City & State _____ Grower Load No. H.T.N. #135
Ship To _____ Truckee HIGHLAND
Address _____ License N.C. 598184
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P O No. _____ Address _____

[illegible]

Special Instructions: MAINTAIN 38°

Time of Departure: _____ Driver's Signature: James C. Fourn

Shipper's Representative Jim Harkness 1

Receiver's Signature _____ Time _____ Temp. _____

Comments. _____

EXHIBIT	1	52
---------	---	----

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P.O. No. _____

Date 7-23-85
Sold For H.T. Holmes
Grower Load No HTN #137
Trucker DeWitt
License S60071 N.C.
Our File Number _____
Broker _____
Address _____

[illegible]Special Instructions: MAINTAIN 38°

Time of Departure _____ Driver's Signature Calif J. Lopez
Shipper's Representative Greg Henderson

Receiver's Signature _____ Time _____ Temp. _____

Comments _____

152 1 50

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P.O. Drawer 312

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P. O. No. _____

Date 7-25-85
Sold For H.T. HOLMES
Grower Load No N.T.H. #139
Trucker WYMAN
License U62821 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions: Min 12w 38°

Time of Departure, _____, _____ Driver's Signature W. J. Stapp

Shipper's Representative [Signature]

Receiver's Signature. _____ Time _____ Temp. _____

Comments _____

EXHIBIT I 52

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To _____ Date 7-25-85
Address _____ Sold For H.T. HOLMES
City & State _____ Grower Load No. H.T.H. # 140
Ship To _____ Trucker HUTTON
Address _____ License 568502 FLA
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No _____ Address _____

[illegible]

Special Instructions: MAINTAIN 38°

Time of Departure: _____ Driver's Signature: Robert E. Warden

Shipper's Representative G. A. [Signature]

Receiver's Signature: _____ Time _____ Temp _____

Comments: _____

EXH	1	11
-----	---	----

Sold To _____ Date 1-25-85
Address _____ Sold For H.T. Homes
City & State _____ Grower Load No. HTH # 141
Ship To _____ Trucker Thompson
Address _____ License R 61324 N. C.
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

[illegible]

Special Instructions: _____

Time of Departure: _____ Driver's Signature J. J. Messer

Shipper's Representative Joe Indryns

Receiver's Signature _____ Time _____ Temp _____

Comments

EXHIBIT 1 57

IMPERIAL BRANDS, INC., and CHARLES E. JOYNER

Telephone 813/676-9475

IMPERIAL BRANDS, INC.

305 South Wetmore Avenue

Lake Wales, FL 33853

P.O. Drawer 312

Sold To _____

Date 7-25-75

Address _____

Sold For H.T. Holmes

City & State _____

Grower Load No. J.T.H. #142

Ship To _____

Trucker PATRUS

Address _____

License 510329 FLA

City & State _____

Our File Number _____

To Arrive _____

Broker _____

Buyer's P.O. No. _____

Address _____

[illegible]

Special Instructions: MANTAN 39°

Time of Departure 11:15 / Driver's Signature Frank Weston

Shipper's Representative Ray H. Smith

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

EXHIBIT 1 58

P O Drawer 312

Date 7-26-85
Sold For W. T. Holmes
Grower Load No. HTN #143
Trucker HIGHMANSEN
License T6978 MONT
Our File Number _____
Broker _____
Address _____

[illegible]

Time of Departure: _____ Driver's Signature *[Signature]*
Shipper's Representative *[Signature]*

Comments: _____

~~501~~ 1-59

Sold To W D PERLA
Address LOT 4-18
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive SATURDAY
Buyer's P O No _____

Date 7-26-85
Sold For H.T. HOLMES
Grower Load No H.T.N. # 144c
Trucker JENI24 GOSWEL
License P 73876 FLA
Our File Number _____
Broker _____
Address _____

[illegible]Special Instructions MANTA 38°

Time of Departure: _____ Driver's Signature _____

Shipper's Representative

Driver's Signature

Receiver's Signature

Time

Temp

Comments

EXPIRES: 1 61

Telephone 813/676-9475

IMPERIAL BRANDS, INC.
305 South Wetmore Avenue
Lake Wales, FL 33853

P O Drawer 312

Sold To PETER Date 7-29-85
Address _____ Sold For H.T. HOLMES
City & State _____ Grower Load No HTN #146
Ship To _____ Trucker Thomson
Address _____ License R 61324 N.C.
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

Packages	Container	Size	Variety	Grade	F O B Price	Freight	Delivered Price	Total
800	7/ BU.	2'x-2'	O'HENRY + TOLERENCE					
		LOAD NOT U.S.	#1					
		LOAD AVERAGE IN GRADE,	RUT SOME BOXES OVER					
		CONTAINER TOLERANCE.						
		ALL HOLMES						

Special Instructions: _____

Time of Departure: _____ Driver's Signature J. Messer

Shipper's Representative _____ 7

Receiver's Signature: _____ Time _____ Temp. _____

Comments: _____

EXHIBIT 1 63

P O Drawer 312

Date 7-21-85
Sold For N.T. Holmes
Grower Load No. N.T.N. #148A
Trucker HIGHLANDER
License 4510 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Comments _____

1	65
---	----

Telephone 813/676-9475

P.O. Drawer 312

Sold To _____ Date 7-29
Address _____ Sold For W T Holmes
City & State _____ Grower Load No. 16 T.H. # 150
Ship To _____ Trucker Frank
Address _____ License S 1032A B.A.
City & State _____ Our File Number _____
To Arrive _____ Broker _____
Buyer's P.O. No. _____ Address _____

[illegible]

Special Instructions: MONTANA 38°

Time of Departure _____ Driver's Signature Frank Quintus

Shipper's Representative By Judge

Receiver's Signature _____ Time _____ Temp _____

Comments _____

EXHIBIT 1 68

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P. O. No. _____

Date 7-30-85
Sold For V.T. HAMMES
Grower Load No HTH #151
Trucker Dewitt
License E21014 N.C.
Our File Number _____
Broker _____
Address _____

Packages	Container	Size	Variety	Grade	F O B Price	Freight	Delivered Price	Total
149	3/4 BU	24-2 1/2"	JEFFERSON	U.S. #1 EXTRA				
515	PANTA	48 INCHES	ONE-PYTH JEFFERSON	FANCY				
	24	12 WISE						
		132 HOLMES						
	PANTA	ALL HOLMES						

Special Instructions MAINTAIN 38°

Time of Departure:

Driver's Signature

Shipper's Representative

Receiver's Signature

Time

Temp

Comments:

EXHIBIT 1 69

Sold To _____
Address _____
City & State _____
Ship To _____
Address _____
City & State _____
To Arrive _____
Buyer's P. O. No. _____

Date 8-2-85
Sold For H. T. Holmes
Grower Load No HT #154
Trucker Paul Elmore
License JD-8865 FLA
Our File Number _____
Broker _____
Address _____

[illegible]Special Instructions: MOUNTAIN 380

Time of Departure: _____ Driver's Signature [Signature]
Shipper's Representative [Signature]

Receiver's Signature: _____ Time _____ Temp. _____

Comments: MARKED "JEFFERSON" BECAUSE NO "MONROE" STAMP AVAILABLE.
FRUIT IS ALL MONROE

CP 10000 6 35

1

P O Drawer 312

[illegible]

EXHIBIT 1 72

P O Drawer 312

Date 8-2-85
Sold For H.T. Holmes
Grower Load No H.T.H. # 156
Trucker JEFF GOSNELL
License P 73896 FLA
Our File Number _____
Broker _____
Address _____

[illegible]

Special Instructions MAINTAIN 38'. DELIVER 9:00 A.M. 8-3-85 AT DOOR #15.

Shipper's Representative Greg Hunkeler CT

Receiver's Signature _____ Time _____ Temp. _____

Comments: _____

TYPE 1 73



IMPERIAL BRANDS, INC.

P.O. DRAWER 312 LAKEWALES FLORIDA 33853 PHONE 813/676 9475

February 8, 1986

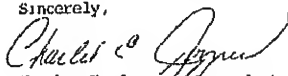
United States Dept. of Agriculture
Farmers Home Administration
Mr. Frank A. Sligh
P.O. Box 10
Edgefield, S.C. 29824

Dear Mr. Sligh:

In reference to our telephone conversation on February 3, 1986, please be advised of my proposal to pay H.T. Holmes and Sons of Trenton, S.C. the \$281,000 owed to them for 1985 peach crop from Imperial Brands, Inc.

The first payment of \$50,000 to be paid on or before July 15, 1986, plus earnings of brokerage at .35 per carton for 1986 peach crop. These earnings should total \$50,000 or more. The second payment of \$50,000 to be paid on or before October 1st, 1986. The third payment of \$50,000 to be paid on or before January 1st, 1987 and the balance to be paid July 15th, 1987.

Sincerely,


Charles E. Joyner, President
Imperial Brands, Inc.

CJS/g

C.C. H. T. Holmes and Sons

6. $\frac{1}{2} \log 10 = \frac{1}{2} \log 10 = 0.5$

TOTBLANE REF 515430 U S PAT LIT
 PAT 3 446447 P 44-1005 01, 04, 05, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833,

United States Bankruptcy Court for the Middle District of Florida - Tampa Division

IMPERIAL BRANDS, INC.

Case No.

U.S. BANKRUPTCY COURT
DISTRICT OF FLORIDA

Debtor set forth here all names including trade names used by Debtor within last 6 years

Social Security No

Debtor's Employer's Tax ID No 59-2081173

VOLUNTARY PETITION

- 1 Debtor's mailing address, including county, is 201 Highway 60 East, Lake Wales ...
Mailing address: P.O. Drawer 312, Lake-Wales, FL 33853
- 2 Debtor has resided (or has had his domicile or has had his principal place of business or has had his principal assets) within this district for the preceding 180 days (or for a longer portion of the preceding 180 days than in any other district)
- 3 Debtor is qualified to file this petition and is entitled to the benefits of Title 11, United States Code as a voluntary debtor.
- 4 (If appropriate) A copy of debtor's proposed plan, dated _____, is attached (or Debtor intends to file a plan pursuant to ☐ Chapter 11 or ☐ Chapter 13) of Title 11, United States Code)
- 5 (If debtor is a corporation) Exhibit "A" is attached to and made part of this petition.
- 6 (If debtor is an individual whose debts are primarily consumer debts) Debtor is aware that (he or she) may proceed under Chapter 7 or 13 of Title 11, United States Code, understands the relief available under each such chapter, and chooses to proceed under Chapter 7 of such title
7. (If debtor is an individual whose debts are primarily consumer debts and such debtor is represented by an attorney) A declaration or an affidavit in the form of Exhibit E is attached to and made a part of this petition

Wherefore, petitioner prays for relief in accordance with Chapter 7 (~~Chapter 7~~ or ~~Chapter 11~~) of Title 18, United States Code.

Signed

Attorney: Allan C. Watkins, Esq.
315 E. Madison Street, #1000
Add. to: Tampa, Florida 33602
#813/221-5897

the average of the
proportion of the total

Peunogres

State of Florida
County of Hillsborough

I, Charles E Joyner, President
foregoing petition, declare under penalty of perjury that the foregoing is true and correct

Executed on July 1986

Signature _____

Charles E. Joyner, President

EXHIBIT

1

United States Bankruptcy Court for the Middle District of Florida - Tampa Division

In re

IMPERIAL BRANDS, INC.

JUL 3 11 23 AM '86

Case No. 79-11173
DISTRICT OF FLORIDA

Debtor (set forth here all names including trade names used by Debtor within last 6 years)
Social Security No. Debtor's Employer's Tax ID No. 59-2082173

VOLUNTARY PETITION

86 - 2898

1. Petitioner's mailing address, including county, is 201 Highway 60 East., Lake Wales
Mailing address: P.O. Drawer 312, Lake Wales, FL 33853
2. Petitioner has resided (or has had his domicile or has had his principal place of business or has had his principal assets) within this district for the preceding 180 days (or for a longer portion of the preceding 180 days than in any other district)
3. Petitioner is qualified to file this petition and is entitled to the benefits of Title 11, United States Code as a voluntary debtor
4. (If appropriate) A copy of petitioner's proposed plan, dated _____, is attached (or Petitioner intends to file a plan pursuant to ☐ Chapter 11 or ☐ Chapter 13) of Title 11, United States Code)
5. (If petitioner is a corporation) Exhibit "A" is attached to and made part of this petition
6. (If petitioner is an individual whose debts are primarily consumer debts) Petitioner is aware that (he or she) may proceed under Chapter 7 or 13 of Title 11, United States Code, understands the relief available under each such chapter, and chooses to proceed under Chapter 7 of such title
7. (If petitioner is an individual whose debts are primarily consumer debts and such petitioner is represented by an attorney) A declaration or an affidavit in the form of Exhibit "B" is attached to and made a part of this petition

Wherefore, petitioner prays for relief in accordance with Chapter 7 (or Chapter 11 or Chapter 13) of Title 11, United States Code

Signed

Allan C. Watkins
Attorney: Allan C. Watkins, Esq.
315 E. Madison Street, #1000
Address: Tampa, Florida 33602
#813/221-5897

ORDER FOR RELIEF GRANTED
ALEXANDER L. PASKAY, CHIEF BANKRUPTCY JUDGE

(Petitioner's name must be represented by a lawyer)

Petitioner

State of Florida
County of Hillsborough

I, Charles E. Joyner, President
foregoing petition, declare under penalty of perjury that the foregoing is true and correct

the petitioner named in the

Executed on July 1986

Signature

Charles E. Joyner
Charles E. Joyner, President

02/94/EMH 3 2

SECURED CREDITORS

American Bank of Polk County
222 Highway 60 East
Lake Wales, FL 33853

Vehicles

JUL 3 10 27 AM '08
US BANKRUPTCY COURT
DISTRICT OF FLORIDA

UNSECURED CREDITORS

D & E Farm P. O. Box 366 Reynolds, GA 31076	JUL 9 11:21 AM '86 US BANK, DISTRICT OF COLUMBIA	25,698.20
Wise Acre Route 1, Box 15-F Trenton, S.C. 29847		75,956.54
H. T. Holmes & Sons Route 2, Box 111-B Trenton, S. C. 29847		276,591.81
D & D International 315 NYC Terminal Market Bronx, N.Y. 10474		26,713.00
Frupac International New Market Ste 309 Philadelphia, PA 19147		49,928.60
Orange Co. of Florida, Inc. P. O. Box 127 Lake Hamilton, FL 33851		3,453.12
Produce Reporter Co 315 Wesley Street Wheaton, Ill 60187		318.00
Walden & Sparkman P. O. Box 98 Dover, FL 33527-0098		4,723.20
Ryan Instruments P. O. Box 599 Kirkland, WA 98083		1,540.23
Centel Telephone Co. 2211 Hydraulic Rd Charlottesville, VA 22910		1,489.70
Stephen P. McCarron, Esquire 8720 Georgia Ave. Suite 607, Metropolitan Bldg. Silver Spring, MD 20910		4,121.58
General Telephone co P. O. Box 3350 Tampa, FL 33620-3350		645.71
Roberts Flying Service, Inc. P. O. Box 1011 Lakeland, FL 33802	JUL 9 11:21 AM '86 US BANK, DISTRICT OF COLUMBIA	360.00
South Carolina Peach Council P. O. Box 11280 Columbia, S. C. 25401		200.00
Specialty Avionics Ltd. Rte 3, Box 245 Bartow, FL 33830		152.25
The Partlow Corporation 2 Campion Rd New Hartford, N.Y. 13413		129.00
Atlantic National Bank 149 East Stuart Ave Lake Wales, FL 33853		28,289.74
L & R Orchards P. O. Box 971 Moultrie, GA 31768	Disputed	unknown
L & R Orchards c/o Thomas Kirby, Esquire P. O. Box 1748 Moultrie, CA 31776		
Internal Peve-ue Service Charblee, Georgia		3,815.88 4,717.43

**In re: SAVE-MORE FOODS, INC., a/t/a TAYLOR & SONS.
PACA Docket No. D-88-520.
Decision and Order filed May 23, 1988.**

Failure to make full payment - Failure to file answer.

Eric Paul, for Complainant.

Respondent, Pro se.

Default Decision and Order issued by Edward H. McGrail, Administrative Law Judge.

DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) hereinafter referred to as the "Act", instituted by a complaint filed on March 16, 1988, by the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. It is alleged in the complaint that during the period February 1987 through November 1987, respondent purchased, received, and accepted, in interstate and foreign commerce, from three sellers, 114 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices or balances thereof in the total amount of \$303,691.28.

A copy of the complaint was served upon respondent which complaint has not been answered. The time filing an answer having run, and upon the motion of the complainant for the issuance of a default order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent, Save-More Foods, Inc., a/t/a Taylor & Sons, is a corporation, whose address is 3155 V Street, NW, Washington, DC 20018.

2. Pursuant to the licensing provisions of the Act, license number 810375 was issued to respondent on December 23, 1980, was renewed annually, presently is in effect, and is next subject to renewal on or before December 23, 1988.

3. As more fully set forth in paragraph 5 of the complaint, during the period February 1987 through November 1987 respondent purchased, received, and accepted in interstate and foreign commerce, from three sellers, 114 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, or balances thereof, in the total amount of \$303,691.28.

Conclusions

Respondent's failure to make full payment promptly with respect to the 114 transactions set forth in Finding of Fact No. 3, above, constitutes willful, repeated and flagrant violations of Section 2 of the Act (7 U.S.C § 499b), for which the Order below is issued.

Order

Respondent's license is revoked.

This Order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings thirty-five days after service hereof, unless appealed to the Secretary by a party to the proceeding within thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon the parties.

[This decision and order became final July 1, 1988.--Editor.]

REPARATION DECISIONS

TOM BENGARD RANCH, INC. v. INTERCOAST MARKETING, INC.
PACA Docket No. 2-7435.

Decision and Order issued July 15, 1988.

George S. Whitten, Presiding Officer.

Thomas R. Oliveri, Newport Beach, California, for Complainant.

Respondent, Pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

Within 30 days from the date of this order, respondent shall pay to complainant, as reparation, \$4,614.50, with interest thereon at the rate of 13 percent per annum, from July 1, 1986, until paid.

Copies of this order shall be served upon the parties.

GODFREY BORGARDT AND SONS, INC. v. WAY-A-HEAD FARMS, INC.
PACA Docket No. 2-7290.

Decision and Order issued July 1, 1988.

Dennis Becker, Presiding Officer.

Complainant, Pro se.

Respondent, Pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

Within 30 days from the date of this order respondent shall pay the complainant \$4,103.25, with interest thereon at the rate of 13 percent per annum from October 1, 1985, until paid.

Copies of this order shall be served upon the parties.

ANTHONY BROKERAGE, INC. v. AMERICAN MERCANTILE CO.
PACA Docket No. 2-7553.
Order of Dismissal issued July 8, 1988.

Order issued by Donald A. Campbell, Judicial Officer.

ORDER OF DISMISSAL
(Summarized)

Complainant notified the Department, by letter dated June 15, 1988, that payment had been received, and authorized dismissal of its complaint. Accordingly, the complaint is dismissed.

LEON DEWEESE d/b/a DEWEESE TOMATO FARM v. GOLD TOP TOMATO FARMS, INC.
PACA Docket No. 2-7421.
Decision and Order issued July 13, 1988.

George S. Whitten, Presiding Officer.
Complainant, Pro se.
Respondent, Pro se.
Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER
(Summarized)

Respondent shall pay complainant \$6,000.50 within 30 days of the date of this Order. If it fails to do so it shall pay interest thereon at the rate of 13 percent per annum from the first day of the month after the 30 days have elapsed until paid.

Copies of this order shall be served upon the parties.

FAR SOUTH, INC. d/b/a B & R FARMS v. SANSU PRODUCE CO., INC.
PACA Docket No. 2-7422.

Decision and Order issued July 15, 1988.

George S. Whitten, Presiding Officer.

Complainant, Pro se.

R. Thomas Radcliffe, Jr., Baltimore, Maryland, for Respondent.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

Within 30 days from the date of this order, respondent shall pay to complainant, as reparation, \$1,404.75, with interest thereon at the rate of 13 percent per annum from June 1, 1986, until paid.

Copies of this order shall be served upon the parties.

FAR SOUTH, INC. d/b/a QUALITY PRODUCE CO. v. HE-BO FARMS, INC.

PACA Docket No. 2-7042.

Order issued July 1, 1988.

Order issued by Donald A. Campbell, Judicial Officer.

STAY ORDER

A Decision and Order was issued on June 13, 1988. Petitions for Relief and for an extension of time to file a petition for reconsideration were filed on June 22, 1988. For good cause shown, the Order in this proceeding is stayed. Respondent shall have until August 1, 1988, in which to file a reply to complainant's Motion for Relief.

**GEORGE FONTES d/b/a FRONTIER PACKING COMPANY v. VITA-
WELLBROCK-KEARNEY, INC.**

PACA Docket No. 2-7433.

Decision and Order issued July 15, 1988.

Dennis Becker, Presiding Officer.

Thomas R. Oliveri, Newport Beach, California, for Complainant

Respondent, Pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

The complaint is dismissed.

Copies of this order shall be served upon the parties.

FRUITWORLD MARKETING, INC. v. EVERGREEN SUPPLY COMPANY.

PACA Docket No. 2-7257.

Decision and Order issued July 8, 1988.

Dennis Becker, Presiding Officer.

Complainant, Pro se.

L. C. John, Detroit, Michigan, for Respondent.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

Within 30 days from the date of this order respondent shall pay the complainant \$5,600.00, with interest thereon at the rate of 13 percent per annum, from October 1, 1985, until paid. In the event complainant has already received \$3,226.00, the amount which shall be paid by respondent is reduced to \$2,374.00, with interest thereon at the rate of 13 percent per annum from October 1, 1985, until paid.

Copies of this order shall be served upon the parties.

HARVEST TIME PRODUCE v. HOUSTON AVOCADO CO., INC.

PACA Docket No. 2-7245.

Order of Dismissal issued July 13, 1988.

Sharlene W. Lassiter, Presiding Officer.

Thomas R. Oliveri, Newport Beach, California, for Complainant.

Jerry D. Patchen, Houston, Texas, for Respondent.

Order issued by Donald A. Campbell, Judicial Officer.

ORDER OF DISMISSAL

(Summarized)

Complainant notified the Department that the parties entered into a settlement, and moved for dismissal of the complaint. Respondent had opportunity to show cause why its counterclaim should not be dismissed but did not file an objection thereto.

Therefore, the complaint is hereby dismissed with prejudice.

Copies of this order shall be served upon the parties.

MATTAX PRODUCE SHIPPERS, INC. v. PELICAN TOMATO CO., INC.

PACA Docket No. 2-7364.

Decision and Order issued July 15, 1988.

George S. Whitten, Presiding Officer.

Complainant, Pro se.

Salvador M. Cusimano, New Orleans, Louisiana, for Respondent.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

The complaint is dismissed.

Copies of this order shall be served upon the parties.

MIDWEST MARKETING COMPANY v. LAWRENCE J. LAPIDE, INC.
PACA Docket No. 2-7430.
Decision and Order issued July 15, 1988.

George S. Whitten, Presiding Officer.
Complainant, Pro se.
Respondent, Pro se.
Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER
(Summarized)

The complaint is dismissed.
Copies of this order shall be served upon the parties.

OSHITA MARKETING, INC. v. INTERCOAST MARKETING, INC.
PACA Docket No. 2-7429.
Decision and Order issued July 15, 1988.

George S. Whitten, Presiding Officer.
Thomas R. Oliveri, Newport Beach, California, for Complainant.
Respondent, Pro se.
Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER
(Summarized)

Within 30 days from the date of this order, respondent shall pay to complainant, as reparation, \$9,388.75, with interest thereon at the rate of 13 percent per annum from July 1, 1986, until paid.
Copies of this order shall be served upon the parties.

MICHAEL S. McKAY d/b/a OLYMPIC PRODUCE v. RICHARD SHELTON d/b/a MID-VALLEY BROKERAGE COMPANY.
PACA Docket No. 2-7216.
Decision and Order issued July 13, 1988.

Dennis Becker, Presiding Officer

Complainant, Pro se.

Respondent, Pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER
(Summarized)

Within 30 days from the date of this order respondent shall pay to complainant \$1,334.56, with interest thereon at the rate of 13 percent per annum from January 1, 1986, until paid.

Copies of this order shall be served upon the parties.

A.L. PRAY & SON POTATO CO., LTD. v. EGALE THREE, INC. d/b/a TRADEMARK PRODUCE & SALES.
PACA Docket No. 2-7355.
Decision and Order filed July 13, 1988.

George S. Whitten, Presiding Officer.

Complainant, Pro se.

Respondent, Pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER
(Summarized)

Within 30 days from the date of this order, respondent shall pay to complainant, as reparation, \$91.72, with interest thereon at the rate of 13 percent per annum from September 1, 1985, until paid

Copies of this order shall be served upon the parties.

C.H. ROBINSON COMPANY v. ED SCHWARTZ d/b/a ED'S FARMERS MARKET.

PACA Docket No. 2-7194.

Decision and Order filed July 8, 1988.

Dennis Becker, Presiding Officer.

Owen Gleason, Eden Prairie, Minnesota for complainant.

Respondent, pro se.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

**DECISION AND ORDER
(Summarized)**

The complaint is dismissed.

Copies of this order shall be served upon the parties.

ELMORE & STAHL, INC. v. RUSSO FARMS, INC.

PACA Docket No. 2-7372.

Ruling filed July 13, 1988.

Andrew Y. Stanton, Presiding Officer.

Complainant, pro se.

Gary D. Wodlinger, Vineland, New Jersey, for respondent.

Ruling issued by Donald A. Campbell, Judicial Officer.

RULING ON RECONSIDERATION

In this reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*), a decision and order was issued on June 16, 1988, awarding reparation to complainant from respondent in the amount of \$7,190.92 plus interest. On June 23, 1988, respondent filed a petition for reconsideration, which automatically operated to set aside the decision and order pending final action on the petition.

Respondent makes only one argument in support of its petition, which is that the decision and order erroneously concluded that respondent failed to file a brief, and respondent claims its brief was filed on April 9, 1987. Respondent is correct in its assertion that a brief was filed, and the decision and order is thus amended to reflect this. However, all of the issues raised in respondent's brief were dealt with in the decision and order. Therefore, the reparation awarded by the decision and order will not be changed.

The June 16, 1988, decision and order is hereby reinstated, as amended herein, and the amount awarded therein, including interest, should be paid by respondent to complainant within 30 days from the date of this order.

Copies of this order shall be served upon the parties.

STAN HARTMAN SALES CO., INC. v. BILL H. CLARK, d/b/a MEMPHIS PRODUCE CO.

PACA Docket No. R-88-117.

Order of Dismissal issued July 8, 1988.

Order issued by Donald A. Campbell, Judicial Officer.

ORDER OF DISMISSAL

(Summarized)

Complainant notified the Department that respondent tendered payment in full settlement of complainant's claim, and authorized dismissal of its complaint.

Accordingly, the complaint is hereby dismissed.

**ROBERT D. WURDEN a/k/a BOB WURDEN v. WINDSOR FARMS, INC.
and/or MID-AMERICA POTATO COMPANY.**

PACA Docket No. 2-7158.

Decision and Order issued July 1, 1988.

Thomas C. Heinz, Presiding Officer.

Donald H. Leonard, E. Grand Forks, Minnesota, for complainant.

Stephen P. McCarron, Silver Spring, Maryland, for respondent.

Decision and Order issued by Donald A. Campbell, Judicial Officer.

DECISION AND ORDER

(Summarized)

Within 30 days of the date of this Order respondents Windsor Farms, Inc., and/or Mid-America Potato Company shall pay complainant Robert D. Wurden as reparation a total of \$18,999.00, with interest thereon computed as follows: 13 percent of \$4,749.25 from January 1, 1986 until paid; 13 percent of \$4,749.25 from March 1, 1986 until paid; 13 percent of \$4,749.25 from May 1, 1986 until paid; and 13 percent of \$4,749.25 from July 1, 1986, until paid.

Within 30 days from the date of this Order respondents shall pay complainant \$857.00 for fees and expenses from the date of this Order until paid.

Copies of this Order shall be served upon the parties.

**REPARATION DEFAULT ORDERS ISSUED BY
DONALD A. CAMPBELL, JUDICIAL OFFICER**

(Summarized)

**ABC RHUBARB FARMS INC. v. SOUTH BRONX GREENHOUSE INC.
PACA Docket No. RD-88-323.
Default Order issued July 19, 1988.**

Respondent was ordered to pay complainant, as reparation, \$10,010.00, plus 13 percent interest per annum thereon from April 1, 1987, until paid.

**BLUE ANCHOR INC. v. L. R. MORRIS PRODUCE EXCHANGE INC.
PACA Docket No. RD-88-315.
Default Order issued July 7, 1988.**

Respondent was ordered to pay complainant, as reparation, \$5,505.57, plus 13 percent interest per annum thereon from August 1, 1987, until paid.

**BILL E. BOND d/b/a RIO GRANDE PACKERS v. U.S. FOOD
MARKETING INC.
PACA Docket No. RD-88-313.
Default Order issued July 7, 1988.**

Respondent was ordered to pay complainant, as reparation, \$5,400.00, plus 13 percent interest per annum thereon from December 1, 1986, until paid.

**BONITA PACKING CO. v. L. R. MORRIS PRODUCE EXCHANGE INC.
PACA Docket No. RD-88-328.
Default Order issued July 20, 1988.**

Respondent was ordered to pay complainant, as reparation, \$5,399.30, plus 13 percent interest per annum thereon from October 1, 1987, until paid.

J. R. BROOKS & SON INC. v. JOHN ORTEGA d/b/a EL RANCHO PRODUCE.

PACA Docket No. RD-88-316.

Default Order issued July 18, 1988.

Respondent was ordered to pay complainant, as reparation, \$4,596.55, plus 13 percent interest per annum thereon from August 1, 1987, until paid.

JAMES G. BYRD AND JOSEPH P. BYRD d/b/a JOE BYRD PRODUCE.

PACA Docket No. RD-88-312.2

Default Order issued July 6, 1988.

Respondent was ordered to pay complainant, as reparation, \$3,950.00, plus 13 percent interest per annum thereon from September 1, 1987, until paid.

COLORADO POTATO GROWERS EXCHANGE v. SELECT PRODUCE INC.

PACA Docket No. RD-88-326.

Default Order issued July 20, 1988.

Respondent was ordered to pay complainant, as reparation, \$7,931.25, plus 13 percent interest per annum thereon from June 1, 1987, until paid.

De BRUYN PRODUCE CO. v. U.S. FOOD MARKETING INC.

PACA Docket No. RD-88-308.

Default Order issued July 6, 1988.

Respondent was ordered to pay complainant, as reparation, \$950.83, plus 13 percent interest per annum thereon from July 1, 1987, until paid.

DIXIELAND PRODUCE INC. v. PHILLIPS PRODUCE OF ETOWAH CO. ALA. INC.

PACA Docket No. RD-88-324.

Default Order issued July 19, 1988.

Respondent was ordered to pay complainant, as reparation, \$6,974.00, plus 13 percent interest per annum thereon from August 1, 1987, until paid.

FRESHCO INCORPORATED v. DOTTIE CHARBONEAU and CHARLES R. SULLWOLD d/b/a C & S PRODUCE.

PACA Docket No. RD-88-321.

Default Order issued July 19, 1988.

Respondent was ordered to pay complainant, as reparation, \$21,183.50, plus 13 percent interest per annum thereon from May 1, 1987, until paid.

FRESHCO INCORPORATED v. JOHNNY E. FAIR d/b/a MRS. FAIR'S FINER FOODS.

PACA Docket No. RD-88-325.

Default Order issued July 19, 1988.

Respondent was ordered to pay complainant, as reparation, \$88,157.40, plus 13 percent interest per annum thereon from May 1, 1987, until paid.

FRESH HERBS, CITRUS AND SPECIALTIES INC. a/t/a PARADISE FARMS v. JIM BEST d/b/a BEST HERB MERCHANT.

PACA Docket No. RD-88-314.

Default Order issued July 7, 1988.

Respondent was ordered to pay complainant, as reparation, \$6,045.67, plus 13 percent interest per annum thereon from May 1, 1987, until paid.

GENERAL POTATO & ONION INC. v. JOSEPH C. CIRAME d/b/a FRONTIER WATERMELON.

PACA Docket No. RD-88-318.

Default Order issued July 18, 1988.

Respondent was ordered to pay complainant, as reparation, \$9,300.00, plus 13 percent interest per annum thereon from October 1, 1987, until paid.

GRIFFIN & BRAND OF McALLEN INC. v. TOXEY G. LANDRUM, JR. d/b/a LANDRUM PRODUCE COMPANY.

PACA Docket No. RD-88-319.

Default Order issued July 18, 1988.

Respondent was ordered to pay complainant, as reparation, \$1,537.50, plus 13 percent interest per annum thereon from May 1, 1987, until paid.

H & H PRODUCE SALES INC. a/t/a SIERRA FRESH MARKETING v. SELECT PRODUCE INC.

PACA Docket No. RD-88-327.

Default Order issued July 20, 1988.

Respondent was ordered to pay complainant, as reparation, \$4,117.50, plus 13 percent interest per annum thereon from September 1, 1987, until paid.

THOMAS C. HARRISON d/b/a HARRISON MELON CO. OF ARIZONA v. FRESH LOOK SALES INC.

PACA Docket No. RD-88-309.

Default Order issued July 6, 1988.

Respondent was ordered to pay complainant, as reparation, \$6,773.39, plus 13 percent interest per annum thereon from August 1, 1987, until paid.

**HORWATH and CO. INC. a/t/a GONZALES PACKING COMPANY v. SIX
FLAGS PRODUCE INC.**
PACA Docket No. RD-88-334.
Default Order issued July 21, 1988.

Respondent was ordered to pay complainant, as reparation, \$13,827.50, plus
13 percent interest per annum thereon from October 1, 1987, until paid.

J. B. M. BROKERAGE CO. v. McBRAYER POTATO CHIP CO.
PACA Docket No. RD-88-335.
Default Order issued July 21, 1988.

Respondent was ordered to pay complainant, as reparation, \$9,900.00, plus
13 percent interest per annum thereon from October 1, 1987, until paid.

LPC INC. v. PAT PEREZ PRODUCE CO. INC.
PACA Docket No. RD-88-311.
Default Order issued July 6, 1988.

Respondent was ordered to pay complainant, as reparation, \$7,776.00, plus
13 percent interest per annum thereon from July 1, 1987, until paid.

**BENNY MANDELL PRODUCE INC. v. THE TOLEDO GARDENERS
COOPERATIVE ASSOCIATION.**
PACA Docket No. RD-88-317.
Default Order issued July 18, 1988.

Respondent was ordered to pay complainant, as reparation, \$24,533.50, plus
13 percent interest per annum thereon from December 1, 1987, until paid.

MILLS DISTRIBUTING COMPANY v. L. R. MORRIS PRODUCE EXCHANGE INC.

PACA Docket No. RD-88-333.

Default Order issued July 21, 1988.

Respondent was ordered to pay complainant, as reparation, \$36,497.25, plus 13 percent interest per annum thereon from September 1, 1987, until paid.

OKRAY PRODUCE COMPANY v. L. R. MORRIS PRODUCE EXCHANGE INC.

PACA Docket No. RD-88-332.

Default Order issued July 21, 1988.

Respondent was ordered to pay complainant, as reparation, \$10,934.00, plus 13 percent interest per annum thereon from December 1, 1987, until paid.

ORLANDO TOMATO INC. v. BOLTON & SON TOMATO SERVICES INC.

PACA Docket No. RD-88-320.

Default Order issued July 18, 1988.

Respondent was ordered to pay complainant, as reparation, \$13,666.00, plus 13 percent interest per annum thereon from November 1, 1987, until paid.

PACIFIC FARM COMPANY v. L. R. MORRIS PRODUCE EXCHANGE INC.

PACA Docket No. RD-88-331

Default Order issued July 21, 1988.

Respondent was ordered to pay complainant, as reparation, \$2,096.10, plus 13 percent interest per annum thereon from October 1, 1987, until paid.

PACIFIC FRESH MARKETING INC. v. GUSTIN PRODUCE INC.
PACA Docket No. RD-88-322
Default Order Issued July 19, 1988.

Respondent was ordered to pay complainant, as reparation, \$828.45, plus 13 percent interest per annum thereon from June 1, 1987, until paid.

VERNON E. PROCTOR d/b/a ROCKY FORD PRODUCE CO. v. L. R. MORRIS PRODUCE EXCHANGE INC.
PACA Docket No. RD-88-330.
Default Order issued July 20, 1988.

Respondent was ordered to pay complainant, as reparation, \$9,930.00, plus 13 percent interest per annum thereon from October 1, 1987, until paid.

SUPERIOR FARMING COMPANY v. MARIO Z. ESCOBEDO SR. and FRANCISCO S. RODRIGUES d/b/a DEL VALLE PROD. & SALES CO.
PACA Docket No. RD-88-305.
Default Order issued July 7, 1988.

Respondent was ordered to pay complainant, as reparation, \$30,358.00, plus 13 percent interest per annum thereon from July 1, 1987, until paid.

GORDON TANTUM INC. v. L. R. MORRIS PRODUCE EXCHANGE INC.
PACA Docket No. RD-88-329.
Default Order issued July 20, 1988.

Respondent was ordered to pay complainant, as reparation, \$26,802.25, plus 13 percent interest per annum thereon from November 1, 1987, until paid.

TOBIASON POTATO CO., INC. v. THE A. E. ALBERT & SONS, INC.

**TOBIASON POTATO COMPANY INC. v. THE A. E. ALBERT & SONS
INC.**

PACA Docket No. RD-88-310.

Default Order issued July 6, 1988.

Respondent was ordered to pay complainant, as reparation, \$6,064.50, plus
13 percent interest per annum thereon from May 1, 1987, until paid.

PLANT QUARANTINE ACT

In re: MERCEDES BENTANCES.

P.Q. Docket No. 88-2

Decision and Order filed June 13, 1988.

Importation of mangoes - Failure to file answer.

Jon Seward, for Complainant.

Respondent, Pro se.

Default Decision and Order issued by Paul Kane, Administrative Law Judge.

DEFAULT DECISION AND ORDER

This proceeding was instituted under the Plant Quarantine Act of August 12, 1912, as amended (7 U.S.C. §§ 151-164a and 167) by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent violated section 319.56 of the regulations (7 C.F.R. § 319.56) issued under the Act. A copy of the complaint and the Rules of Practice governing proceedings under the Act were served by certified mail on respondent by the Hearing Clerk on November 24, 1987.

Respondent was informed in the complaint and in the letter of service that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, that failure to deny, otherwise respond or plead specifically to any allegation in the complaint would constitute an admission of such allegation, and that failure to file an answer within the prescribed time would constitute an admission of the allegations in the complaint and waiver of hearing. The letter of service also advised respondent that failure to request an oral hearing within the time for filing an answer would constitute a waiver of an oral hearing. Respondent has failed to respond in any manner to allegations in the complaint and has failed to request an oral hearing.

Respondent's failure to file an answer within the time prescribed by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) constitutes an admission of the allegations in the complaint pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) and a waiver of hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Because no basis for a hearing exists, the material allegations of fact in the complaint are adopted and set forth as the Findings of Fact.

Findings of Fact

1. Mercedes Bentances, herein referred to as the respondent, is an individual whose address is 11-15 Jerome Avenue #1A, New York, New York 10452.

2. On or about May 2, 1987, the respondent imported mangoes into the United States at Jamaica, New York, from the Dominican Republic, in violation of section 319.56(c) of the regulations (7 C.F.R. § 319.56(c)), because the mangoes were prohibited entry into the United States.

Conclusions

Respondent has failed to respond in the required manner to the allegations in the complaint. By reason of the Findings of Fact set forth above, respondent has violated the Act and the regulations issued under the Act. Therefore, the following Order is issued.

Order

Mercedes Bentances is hereby assessed a civil penalty of five hundred dollars (\$500.00), which shall be payable to the "Treasurer of the United States" by certified check or money order and which shall be forwarded within thirty (30) days from the effective date of this Order to:

USDA, APHIS Field Servicing Office
Accounting Section, Butler Square West
5th Floor, 100 North 6th Street
Minneapolis, Minnesota 55403

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. No. 88-2.

This Order shall have the same force and effect as if entered after full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon respondent, unless respondent appeals to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

[This default decision and order became final July 25, 1988.--Editor.]

In re: FRED DELARA and SINGAPORE AIRLINES.

P.Q. Docket No. 238.

Decision and Order filed April 7, 1988.

Failure to present baggage for inspection - Failure to file answer.

Joseph Pembroke, for Complainant.

Respondent, Pro se.

Default Decision and Order issued by Paul Kane, Administrative Law Judge.

DEFAULT DECISION AND ORDER

This proceeding was instituted under the Act of August 20, 1912, as amended, (Act) (7 U.S.C. §§ 161, 162), by a complaint issued by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondents have violated sections 161 and 162 of the Act (7 U.S.C. § 161 and § 162) and sections 318.13-12(a) and 318.13-10).

Copies of the complaint and the Rules of Practice governing proceedings under the Act were served by the Hearing Clerk, by certified mail, upon respondents on May 8, 1986, in conformity with section 1.147 of the Rules of Practice (7 C.F.R. § 1.147).

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136) applicable to this proceeding, respondents were informed in the complaint and the letter of service that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer either denying, admitting, or explaining the allegations in the complaint and requesting an oral hearing would constitute an admission of such allegations and waiver of such hearing. More than twenty (20) days have elapsed since respondents were served with the complaint in question. Respondents have not filed an appropriate answer. This Decision and Order therefore, is issued pursuant to sections 1.136 and 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. §§ 1.136 and 1.139).

Accordingly, the material facts alleged in the complaint, which are admitted by respondents failure to file answers, are adopted and set forth herein as the findings of fact.

Findings of Fact

1. Fred Delara, herein referred to as a respondent, is an individual whose business address is c/o Canada Pacific Air, Terminal Box 59, Honolulu, Hawaii 96819.

2. Singapore Airlines, herein referred to as a respondent, is a corporation whose business address is Terminal Box 49, Honolulu International Airport, Honolulu, Hawaii 96819.

3. On or about December 8, 1985, the respondents violated sections 318.13-12(a) and 318.13-10 of the regulations (7 C.F.R. §§ 318.13-12(a) and 318.13-10) in that the respondent failed to present five (5) pieces of baggage (Bag Claim Tag; Singapore Airlines, Los Angeles 46301, 462102, 4563103, 4631004, 463105) at Honolulu International Airport for inspection, as required.

Conclusions

By reason of the facts in the findings of fact set forth above, respondents have violated the Act and regulations promulgated thereunder. Therefore, the following order is issued.

Order

Respondents are hereby assessed a civil penalty of two hundred fifty dollars (\$250) against Fred Delara and seven hundred fifty dollars (\$750) against Singapore Airlines, which shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

U.S. Department of Agriculture
Animal and Plant Health Inspection Service
Field Servicing Office, Accounting Section
Butler Square West, 5th Floor
100 North Sixth Street
Minneapolis, MN 55403

within thirty (30) days from the effective date of this order.

This order shall have the same force and effect as if entered after full hearing and shall be final and effective 35 days after service of this Decision and Order upon respondents, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.145).

This default decision and order became final as to Singapore Airlines May 19, 1988.--Editor.]

Animal Quarantine and Related Laws

DR. LAWRENCE E. WIMPY, FRED WELLS (AS TO WELLS).
A.Q. Docket No. 268. July 26, 1988.

DR. LAWRENCE E. WIMPY, FRED WELLS (AS TO WIMPY).
A.Q. Docket No. 268. July 26, 1988.

Animal Welfare Act

THE OHIO STATE UNIVERISTY. AWA Docket No. 431. July 29, 1988.

FEEZAL A. SHAW, d/b/a SOUTH AMERICAN UNLIMITED and THE
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO
ANIMALS (AS TO ASPCA). AWA Docket No. 430. July 26, 1988.

Federal Meat and Inspection Act

OLD MISSOURI PACKING CO., INC. FMIA Docket No. 109.
July 28, 1988.

Packers and Stockyards Act

CHIANINA LITE BEEF, INC. d/b/a KEY LITE BEEF, INC.
P&S Docket No. D-88-74. July 7, 1988.

CLAYPOOL LIVESTOCK SALES, INC., AND JAMES P. GIBSON.
P&S Docket No. D-88-69. July 22, 1988.

ERICSON LIVESTOCK MARKET, INC., ET AL. (WITH RESPECT TO
MARLEN LUBER). P&S Docket No. D-88-28. July 25, 1988.

ERICSON LIVESTOCK MARKET, INC., ET AL. (WITH RESPECT TO
D/B LAND AND CATTLE COMPANY INC., WILLIAM BRINKMAN,
AND KATHERINE BRINKMAN). P&S Docket No. D-88-28. July 29, 1988.

LINK INDUSTRIES, INC. AND JOHN E. LINK. P&S Docket No. D-88-29.
July 5, 1988.

PARNELL'S PACKING CO., INC. P&S Docket No. D-88-46. July 7, 1988.

7 S. PEELER, O.W. ADAMS, AND WALLACE STRICKLAND.
cket No. D-88-8. July 7, 1988.

LIVESTOCK AUCTION MARKET, INC., JEROME ROSETH,
A ROSETH, GARY PETERSON AND LONNIE ARNESON
RESPECT TO LONNIE ARNESON). P&S Docket No. D-88-47.
988.

A LIVESTOCK COMPANY, INC., AND RONNYE RICHARDS
RESPECT TO SPARTA LIVESTOCK COMPANY, INC.).
cket No. D-88-43. July 19, 1988.

1 Quarantine Act

. BELTRAN. P.Q. Docket No. 303. July 28, 1988.

2 GABELA AND AIRCRAFT SERVICES INTERNATIONAL INC.
cket No. 229. July 7, 1988.

10 Research and Promotion Act

ALES, INC. PRPA Docket No. D-88-2. July 29, 1988.
